17-319

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1882.

No. 1901.

MADELAINE ROTH, PLAINTIFF IN ERROR,

vs.

FREDERICA EHMAN ET AL., DEFENDANTS IN ERROR.

ERROR TO THE SUPREME COURT OF ILLINOIS.

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STATE OF ILLINOIS:

Supreme court, northern grand division.

At a supreme court, begun and held at Ottawa, on Tuesday, the seventh day of March, in the year of our Lord one thousand eight hundred and eighty-two, within and for the northern grand division of the State of Illinois.

Present, Alfred M. Craig, chief justice; Pinkney H. Walker, justice; Benj. R. Sheldon, justice; T. Lyle Dickey; Jno. Scholfield, justice; John M. Scott, justice; John H. Mulkey, justice; James McCartney, attorney-general; Thomas Clark, sheriff; Everell F. Dutton, clerk.

At the March term, A. D. 1882.

No. 517.	MADALAINE ROTH *vs.* FREDERICKE EHMAN et al.	Appeal from superior court of Cook county.

2 Be it remembered that, to wit, on the 7th day of March, A. D. 1882, there was filed in the office of the clerk of said court, at Ottawa, Illinois, by C. M. Harris, Esq., a certain transcript of record from the superior court of Cook county, Illinois, which said transcript of record is in words and figures following, to wit:

4 STATE OF ILLINOIS, *County of Cook:*

June term, A. D. 1878, of the superior court of said county.

To the Honorable Samuel M. Moore, judge of said court in chancery sitting.

Your oratrix, Madelaine Roth, of the city of Chicago, in said county, respectfully represents, that on the 21st day of July, A. D. 1855, John George Roth, now deceased, and her, were married in said city.

That on the 12th day of July, A. D. 1876, he died intestate, at Schorndorf, in the Kingdom of Wurtemburg, leaving surviving him neither a child, nor children, nor descendant, nor descendants of a child or children, nor mother, nor father, grandmother or grandfather, nor brother nor sister, or uncle or aunt of the whole or half blood; and only two nieces, Friederica Ehman, daughter of Gotleib Roth, deceased, and wife of Casper Ehman and Friederica Schweitcer, wife of William Schweitcer, and daughter of Jacob Roth, deceased, and only grandniece of Frederica Henbach, only child of Frederica Henbach, deceased, who was the daughter of John Roth,

deceased, and wife of William Henbach, and only seven
5 nephews, Jacob Roth, John George Roth, and Gotleib Roth, sons of said Gotleib Roth, deceased, William Roth and Jacob Roth, sons of said Jacob Roth, deceased, and Christian Roth and Johannes Roth, sons of said John Roth, deceased, and your oratrix, his widow, surviving him.

That said Gotleib Roth, Jacob Roth, and John Roth, deceased, as aforesaid, were brothers of her said husband, and died intestate before he did.

That said nieces, grandniece and nephews, were born in lawful wedlock.

That for some years before A. D. 1871, and to his death, her said husband was owner and seized in fee simple, and died owner and so seized of the following real estate, situated in said county, to wit: Lots thirteen (13) and sixteen (16) in assessor's division of lots four (4) and five (5), in block thirty-four (34) of the original town of Chicago.

Lot eleven (11) in assessors' division of lots seven (7) and eight (8), in block fifty-four (54), of the original town of Chicago.

The west half ($\frac{1}{2}$) of lot three (3), in block fifty (50), in school section addition to the city of Chicago.

And lots numbered one (1) to forty (46) inclusive, of George Roth's subdivision of block seventeen (17) of assessor's division of the north quarter ($\frac{1}{4}$) of the southeast quarter (S. E. qr.) of section twenty (S. 20), in township thirty-nine north (39 N.), of range
6 fourteen east (14 E.), by virtue of purchases thereof made by him for valuable considerations by him paid therefor, and valid and regular chains of deeds in writing thereof made to him and emanating from the government of the United States of North America, none of which deeds are or ever have been in her possession, power or control, and that she cannot make exhibit herein of any of them.

That at the death of her said husband, each said Frederica Ehman, Frederica Schweitzer, Frederica Henbach, nieces and grandniece aforesaid, and Jacob Roth, John George Roth, Gotleib Roth, William Roth, Jacob Roth, Christian Roth and Johannes Roth, sons as aforesaid, became his heirs at law and, by inheritance, owner in fee simple of an undivided twentieth (und. 20th) of said real estate, subject to her right of dower therein hereinafter stated, and to on undivided thirtieth (und. 30) of the rents and profits thereof, that have accrued since the death of her said husband.

That she, as such widow, became, at his death, seized in fee simple of the undivided half (und. $\frac{1}{2}$) of all of said real estate after the payment of all just debts against his estate, and entitled to a right of dower in the other half thereof, and to two-thirds ($\frac{2}{3}$rds)
7 of the rents and profits of all thereof that have accrued since his death, subject to the payment of eight thousand dollars hereinafter to be mentioned, and the interest that has accrued and may accrue thereon, or upon payment thereof, or upon

such conditions as equity requires. And acknowledges her liability to pay such amount and interest, and avers her intention and willingness to so do, but states that the estate of her said husband has never had a legal representative or person authorized to receive it or any part of it.

That she has expended for her necessary support all of said eight thousand dollars and the interest that has accrued thereon, save about six thousand dollars, and that she has never since receiving it had any other means unless the one thousand francs, hereinafter to be stated are hers, which she denies, and that she is now worth only about six thousand dollars, and cannot now pay such amount so received by her, but that notwithstanding she will as she may be directed by the decree of this honorable court pay such amount and interest.

That Monroe N. Lord, Robert McClellan, James B. Smith, Robert Borezutchky, August Schosauser, The Nevada Loan
8 Agency, George Buttensnuller, John Mergen and John Gunzenhouser are in the actual possession of different parts of said lot thirteen (13), but how she knowns not, only that it is wrongful.

That Henry J. Christopher, Gustan Labb, William B. Snowhook, Patrick W. Snowhook, William M. Johnston, George W. Gray, John C. Richbey, Frank Scoles, The Merrill Manufacturing Company, Eli L. Canfield, Augustus L. Ashley, Wells Lake and Charles C. Lake are in the actual possession of different parts of said lot sixteen (16), but how she knows not, only that none of them are rightfully so.

That Frederick Simon Metilzer is in the actual possession of said lot eleven (11), but how she knows not, only that he is not rightfully so.

That Patrick Cummings and Bridget Walker are in the actual possession of said west half (W. $\frac{1}{2}$) of said lot three (3), but how she knows not, only that neither of them are rightfully so.

That within her knowledge or belief no one has any interest in said realty or any part thereof in possession, remainder, reversion or otherwise, than has been herein stated.

9 That said Gunzenhouser and Amalie Staehle Roth, so called, and Albert Staehle, her brother, have wrongfully received all the rents and profits that have accrued from said real estate since the death of her said husband, but to what amount she knows not, and have not, nor has either of them accounted therefor, or for any part thereof, and that they are bound to account therefor to said heirs and to your oratrix respectively, to the extent of their several interests aforesaid therein.

That on the 30th day of April, A. D. 1856, her said husband, now deceased, and herself, had issue of said marriage, a son, of whom he was very proud, and who died in about ten days thereafter.

deceased, and wife of William Henbach, and only seven
5 nephews, Jacob Roth, John George Roth, and Gotleib Roth, sons of said Gotleib Roth, deceased, William Roth and Jacob Roth, sons of said Jacob Roth, deceased, and Christian Roth and Johannes Roth, sons of said John Roth, deceased, and your oratrix, his widow, surviving him.

That said Gotleib Roth, Jacob Roth, and John Roth, deceased, as aforesaid, were brothers of her said husband, and died intestate before he did.

That said nieces, grandniece and nephews, were born in lawful wedlock.

That for some years before A. D. 1871, and to his death, her said husband was owner and seized in fee simple, and died owner and so seized of the following real estate, situated in said county, to wit: Lots thirteen (13) and sixteen (16) in assessor's division of lots four (4) and five (5), in block thirty-four (34) of the original town of Chicago.

Lot eleven (11) in assessors' division of lots seven (7) and eight (8), in block fifty-four (54), of the original town of Chicago.

The west half ($\frac{1}{2}$) of lot three (3), in block fifty (50), in school section addition to the city of Chicago.

And lots numbered one (1) to forty (46) inclusive, of George Roth's subdivision of block seventeen (17) of assessor's division of the north quarter ($\frac{1}{4}$) of the southeast quarter (S. E. qr.) of section
6 twenty (S. 20), in township thirty-nine north (39 N.), of range fourteen east (14 E.), by virtue of purchases thereof made by him for valuable considerations by him paid therefor, and valid and regular chains of deeds in writing thereof made to him and emanating from the government of the United States of North America, none of which deeds are or ever have been in her possession, power or control, and that she cannot make exhibit herein of any of them.

That at the death of her said husband, each said Frederica Ehman, Frederica Schweitzer, Frederica Henbach, nieces and grandniece aforesaid, and Jacob Roth, John George Roth, Gotleib Roth, William Roth, Jacob Roth, Christian Roth and Johannes Roth, sons as aforesaid, became his heirs at law and, by inheritance, owner in fee simple of an undivided twentieth (und. 20th) of said real estate, subject to her right of dower therein hereinafter stated, and to on undivided thirtieth (und. 30) of the rents and profits thereof, that have accrued since the death of her said husband.

That she, as such widow, became, at his death, seized in fee simple of the undivided half (und. $\frac{1}{2}$) of all of said real estate after the payment of all just debts against his estate, and entitled to a right of
7 dower in the other half thereof, and to two-thirds ($\frac{2}{3}$rds) of the rents and profits of all thereof that have accrued since his death, subject to the payment of eight thousand dollars hereinafter to be mentioned, and the interest that has accrued and may accrue thereon, or upon payment thereof, or upon

such conditions as equity requires. And acknowledges her liability to pay such amount and interest, and avers her intention and willingness to so do, but states that the estate of her said husband has never had a legal representative or person authorized to receive it or any part of it.

That she has expended for her necessary support all of said eight thousand dollars and the interest that has accrued thereon, save about six thousand dollars, and that she has never since receiving it had any other means unless the one thousand francs, hereinafter to be stated are hers, which she denies, and that she is now worth only about six thousand dollars, and cannot now pay such amount so received by her, but that notwithstanding she will as she may be directed by the decree of this honorable court pay such amount and interest.

That Monroe N. Lord, Robert McClellan, James B. Smith, Robert Borezutchky, August Schosauser, The Nevada Loan
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That Patrick Cummings and Bridget Walker are in the actual possession of said west half (W. $\frac{1}{2}$) of said lot three (3), but how she knows not, only that neither of them are rightfully so.

That within her knowledge or belief no one has any interest in said realty or any part thereof in possession, remainder, reversion or otherwise, than has been herein stated.

9 That said Gunzenhouser and Amalie Staehle Roth, so called, and Albert Staehle, her brother, have wrongfully received all the rents and profits that have accrued from said real estate since the death of her said husband, but to what amount she knows not, and have not, nor has either of them accounted therefor, or for any part thereof, and that they are bound to account therefor to said heirs and to your oratrix respectively, to the extent of their several interests aforesaid therein.

That on the 30th day of April, A. D. 1856, her said husband, now deceased, and herself, had issue of said marriage, a son, of whom he was very proud, and who died in about ten days thereafter.

That when he was buried her said husband said to her that he and she would go to Europe; that he would no longer live in America.

That on the 3rd day of July thereafter her said husband and herself left said city for her father's house, who then resided in Strassburg, then in France, now in Germany, and arrived at her said father's house, in that place, in or about the month of September thereafter, after remaining at different places for a time.

That in or about A. D. 1867, and while her said husband and her were residing at said Schorndorf, she became satisfied that he and Amalie Staehle, now called Amalie Staehle Roth, aforesaid, were in the habit of having adulterous and sexual intercourse with each other, and so charges.

That thereafter, if not before then, so long as her said husband and herself lived together he and said Amalie continued such intercourse, during which her said husband visited said so-called Amalie Staehle Roth almost daily, and often in the presence of your oratrix took her in his carriage on driving excursions.

That during such time her said husband treated her most cruelly, without cause or provocation therefor, by compelling her to do the work of the lowest menial and beating her, and habitually using toward her the most profane, cruel, angry, and obscene language, for the purpose, as she believes and charges, of forcing her to leave him, that such intercourse might be more freely had, which she did, having lost her health, and fearing that she would her life from such treatment, in the month of November, A. D. 1871, and returned to her father's, at said Strassburg, and remained with him until the month of April, A. D. 1877, when she left her father's house to come to said city of Chicago, where she arrived on or about the 21st day of April, A. D. 1877, thereafter, and has remained ever since.

That when she became satisfied of such intercourse as aforesaid, her said husband was about sixty and said so-called Amalie Staehle Roth about twenty-eight years of age.

That on or about the ninth day of September, A. D. 1873, her said husband having for about three years of their married life failed to furnish her any means of support, and not intending as she believed to furnish her any, nor to again live with her because, preferring his adulterous intercourse with said, now so called, Amalie Staehle Roth, which he was then having with her, to the discharge of his marital obligations to your oratrix, and being very much in need of such means, and never having received much from him, and having none only from her father, did apply to her said husband therefor.

That in reply thereto her said husband informed her that he was a ruined man; that the great fire in Chicago, referring to that of October, A. D. 1871, had made him poor;

that his houses had been burned and that the land was of no value, all which she then believed, and her said husband then knew was false, and which he so said to deceive and defraud her.

That her said husband then paid her eight thousand dollars, for which she signed a writing at said Stuttgart, which she was told at and before signing it was a receipt for that amount for her support, which she then believed, and that she has never had it in her possession, power or control only to sign it, and cannot make an exhibit herein of it.

That your oratrix lived in Germany and France from the time that she returned to her father's house as aforesaid, until April, A. D. 1877.

That she was born in Bischwiller, then in France, now in Germany, of French parentage, on the ninth day of March, A. D. 1825; that she has little, if any, capacity for business, and never has transacted business, having always had her own transacted by others.

13 That she is very credulous, confiding, forgiving, inconsiderate, unreflective, unwary, and very susceptible to imposition and surprise and the influence of others.

That her said husband never gave her any information of his business or pecuniary circumstances, and that she never knew much thereof until since the twenty-sixth September, A. D. 1876, until after which time she never received a letter from the United States of North America nor had scarce any conception of what he owned in said United States, never having had an expression thereof save from her said husband as aforesaid.

That soon after said fire she wrote two letters to her brother Louis Moser at said city, for the purpose of obtaining information from him there, both of which were returned, because, as she has been informed and believes, he had changed his residence after said fire.

That she never understood the contents of the so-called instrument of writing aforesaid, if, what she has been informed it is, which she believes, and that she signed it, relying upon the representations aforesaid, of its character.

14 That if it is in it stated, as she is informed and believes it is, that her husband and herself had been divorced, and that she had released all claims of inheritance, and had she known that either were, she would not have signed, for the reason that they were never divorced, and that she never intended to have released such claims, nor supposed that she had.

That, and, or before and since the 9th day of September, A. D. 1873, his property and rights and credits, exclusive of the real estate aforesaid, were of the value of more than sixty thousand dollars, as she has since the 20th day of September, A. D. 1876, been informed and believes, and that such real estate, although then unimproved, save that on said west half of said lot three, there was

a small wood house of little value, and on said lot eleven small wood buildings, which buildings on said lot eleven were the property of tenants and of little value, then was, and for many years before said fire, of the value of more than one hundred and twenty-five thousand, and of the annual rental value of more than five thousand dollars, and after the erection of said buildings on said lots
15 thirteen and sixteen, hereinafter to be named, was of the value of more than one hundred and fifty-seven thousand dollars, and was for sometime thereafter of the annual rental value of more than twelve thousand dollars, as she has since the 26th day of September, A. D. 1876, been informed and believes, but has been informed and believes that such rental value has decreased, but how much, she has not been. Of all which her said husband was all such time aware, as she has since then been informed and believes.

That in the summer or fall of A. D. 1874, her said husband commenced the erection of a brick and stone building on each said lot thirteen and sixteen, and making other improvements on each thereof, and in the winter or spring thereafter completed the same, and that they and such improvements cost and were then of the value of more than thirty-two thousand dollars, and enhanced the value of such lots that amount, and were then paid for by her said husband.

That she signed said so-called instrument when the confidential relation of husband and wife existed between her and her
16 said husband and herself, without any independent advice, or understanding it, if it is as she has been informed and believes that it is, and with little conception of his pecuniary circumstances or her rights as his wife, believing and relying upon his false representations aforesaid, made by him to her for the purpose of defrauding her, knowing that she had no means of support only as aforesaid. And that such so-called agreement, on such account as well as other matters herein stated, is void as against her, even if what she has been informed it is as aforesaid.

That she believes that he procured the execution of said so-called agreement, and paid said eight thousand dollars, believing that thereby he and said so-called Amalie Staehle Roth could continue their adulterous and sexual intercourse uninterruptedly, and that it is on such account against public policy and public morals, and void as against her for either of the reasons aforesaid.

That if, as she has been informed, that is as aforesaid, and a valid agreement, and it is not the latter, it is not a jointure, not only because not conferring an estate in land, but also because of
17 taking effect immediately, which it would have had it been valid. And, moreover, because when executed it did not bear that proportion to his pecuniary means which a jointure must, and was inadequate and unsuitable for one to her as his wife.

That notwithstanding all which she did, on or about the 3d day of

November, A. D. 1877, make in writing, and file in the clerk's office of the county court of said county, her rescission, renunciation, election and obligation, which is as follows, to wit:

I, Madelaine Roth, of the city of Chicago and state of Illinois, widow of John George Roth, deceased, who died in Schorndorf, in the Kingdom of Wurtemburg, on the 12th day of July, A. D. 1876, have rescinded and declared and hold void and as of no effect, and do hereby rescind and declare and hold as void and of no effect the so-called agreement purporting to have been made on the ninth day of September, A. D. 1873, at Stuttgart, Germany, between said Roth, in his lifetime, and my husband until his death, and myself, upon which I then received eight thousand dollars in bonds of the United States of North America.

18 And I have also rescinded and declared and held as void and of no effect the so-called contract purporting to have been made between Amalie Staehle Roth, so-called, and myself, at Schorndorf, on the twenty-sixth day of September, A. D. 1876, in which it was stipulated among other things that said Amalie Staehle Roth, so-called, was to pay me ten thousand marks on the first day of July, A. D. 1877, and, in case of delay, five per cent. interest from that time, and of which she did then pay me one thousand marks.

For the reasons, among others, that each of said so called agreements were procured in a fraudulent manner, and by surprise, fraud, falsehood, false representations, deception, treachery and undue influence practised and imposed on me therefor, when I was in such distress and so much disturbed in mind, and otherwise so incapacitated as to have been unable to have protected my rights had I known them, which I did not, and had no independent advice thereasto, and acted credulously, hastily and without consideration or discretion thereasto, and that I did not know or understand the contents of either of them.

19 And that each of them is against public policy, and inadequate and unsuitable for me.

And that I do hereby bind myself to pay to whomsoever is or may be entitled thereto, said eight thousand dollars and all interest that has accrued and may accrue thereupon from the time I received it, as hereinbefore stated, until it is paid. And that if any one is authorized to receive it, I know not who is to deduct the same or have it deducted from my interest herein asserted as such widow.

And that while I signed said so called agreement with my said husband, upon the representations made to me by him at and before the time of my signing it, that it was to be made and was made only to secure me my support and not as a jointure between us, nor as a release of my rights as his wife, which I believed when I signed it, and that while I would not have signed it had I not so believed.

Yet I, the surviving wife of said John George Roth, late of Schorndorf, in the Kingdom of Wurtemburg, who died there on the

twelfth day of July, A. D. 1876, do hereby renounce and
20 quit all claim to the benefit of said so called agreements, and of any jointure given or assured to me in lieu of dower, or dower and anything else, or of anything if any was ever so given or assured, and do elect to take, in lieu thereof, one-half of the real estate and the whole of the personal estate of the estate of said John George Roth, deceased, after the payment of all just debts against said estate, as an absolute estate in me forever, and the dower to which I am or may be entitled in said estate as the widow of said John George Roth, deceased, and also of real estate of which he was seized of an estate of inheritance during the coverture between him and me which terminated only with his death, and of all real estate of which he was seized in equity during such time, and in real estate contracted for by him in his lifetime, the title to which has been completed since his death, or may be.

That I did on or about the twenty-eighth day of September, A. D. 1877, cause to be tendered to said so-called Amalie Staehle Roth, in legal money, at said Schorndorf, one thousand marks, which had been paid me by her as aforesaid, and five per cent. interest thereon from the twenty-sixth September, A. D. 1876,
21 to that time; the amount of which interest so tendered I do not remember on such rescission of such so-called contract made between her and myself.

And that I hereby release said Amalie Staehle Roth, so-called, from the payment of the nine thousand marks, the remainder of said ten thousand marks, and from all liability on said so-called contract purporting to have been made between her and myself, and renouce any benefit therefrom.

Signed and sealed by me this third day of November, A. D. 1877.

MADELAINE ROTH. [SEAL.]

STATE OF ILLINOIS, *County of Cook:*

I, L. W. Lange, a notary public in and for the county of Cook aforesaid, do hereby certify that Madelaine Roth, whose signature is attached to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this third day of November, A. D. 1877.

22 [SEAL.] L. W. LANG, *Notary Public.*

That she has been informed and believes that said so-called Amalie Staehle Roth pretends to claim the whole of said real estate through a forged deed thereof purporting to have been executed by your oratrix to said Albert Staehle for the alleged con-

sideration of one dollar, on the 18th day of September, A. D. 1876, and claimed to have been acknowledged by her at said Stuttgart, on the 3rd day of October thereafter, which it never was at any time, and a pretended deed thereto from him to her, of what date, for what consideration, or when made, if ever, she does not know and has not been informed.

That she never made nor authorized the making of such forged deed, nor received such pretended consideration or any part thereof, and charges that it is a forgery; and states that neither said so-called Amalie Staehle Roth, nor Albert Staehle, derived any title therefrom or through it.

That she, on the 1st day of November, A. D. 1877, first learned that said so-called Amalie Staehle Roth so claimed said real estate, and that never before had she any intimation of the existence
23 of either of said so-called deeds.

That a copy of said forged deed and of the claimed acknowledgment thereof is herewith filed, marked exhibit A, and made a part hereof.

That such so-called acknowledgment presents no evidence that the so-called deed last aforesaid was ever acknowledged, as it does not appear that it was taken before any person authorized to take acknowledgments.

That on the 14th day of July, A. D. 1876, she at Schitiggheim, in Elsass, where she then resided, received a letter from Frederica Weber at said Schorndorf, giving her the first intelligence of the death of her said husband, and stating that he died on the twelfth of that month at said Schorndorf, and that he would be buried on the fourteenth day of that month, which caused her much sorrow and grief, as she still loved him notwithstanding his treatment aforesaid of her, and though abused by him as aforesaid she had forgiven him.

That she desired very much to have seen him before his death, and to have attended his funeral. Not having an opportunity of either, she, on the twenty-fifth day of September thereafter,
24 went to said Schorndorf only to see his grave, when said Mrs. Frederica Weber had prepared in her house, in said Schorndorf, a room for her, and met her at the depot of the railroad at said Schorndorf, on which she arrived there, and took her to her said house.

That when, on the next morning, she was about to start to see the grave, it commenced raining, on account of which she did not then go, but visited her former supposed friends and neighbors, among whom was Louis Muller, who requested her to go to the so-called Amalie Staehle Roth, when she asked him how he could ask her to go to see a woman who had caused her so much sorrow and pain. He replied that she had no right to any of her said husband's property; that she had been divorced, and that said so-called Amalie Staehle Roth only needed her signature for matter

of form. To which, she replied that they had not been divorced, and that she had come to see his grave, and for no other purpose.

That he then stated to her that he had believed that she would make said so-called Amalie Roth trouble, and that he had arranged the matter, and, that although she had no right whatever to claim anything from the estate of her said deceased husband, that said so-called Amalie Staehle Roth would give her ten thousand marks because said husband had not given her enough.

That she did not know whether she had any such rights, being then ignorant of the pecuniary circumstances of her said husband and of her rights as his widow, as hereinbefore stated.

That on an occasion so solemn, painful and distracting to her mind as that of her having gone to said Schorndorf at the time aforesaid, a distance of one hundred and twenty miles from her then home, alone, for the purpose only of seeing the grave of her deceased husband, whose death had caused her so much grief and anguish, the mention of a business transaction to her relative to the estate of her deceased husband, especially by old neighbors and supposed friends, whose company she had sought for solace until the falling rain, which prevented her from going to his grave, ceased, so surprised, confounded, misled and affected her as to have rendered her incapable of maintaining her rights, had she known them, which she did not, or had she ever had the capacity for so doing, which she never had.

That on the day last aforesaid said Muller made the representations and gave the advice aforesaid, as did Gotthilf Steiger and said so-called Amalie Staehle Roth in connection therewith in the same interview similar ones, and sanction those so made by said Muller.

And that said Amalie Staehle Roth stated to her also at the time that her said husband had made a will, devising his property to his relatives, which he had not, and she then knew that he had not. And that they so kindly treated her, and professed such solicitude for her welfare and so persuaded her that she does not believe that she could have resisted their influence or would have displeased them had she supposed that the doing of the one or the other was essential to the protection of her rights, which she did not. And having had no advice with reference to her interest in said estate, except that aforesaid, and having regarded it as having been given for her benefit on account of such treatment, professed solicitude for her welfare and supposed friendship aforesaid, and because of grief and pain, consequent upon the death of her said husband, and of the distraction of her mind on account thereof, and of the effect produced upon it by the occasion and circumstances aforesaid, and of the influence exercised over her as aforesaid, she believed the representations aforesaid made to her that she had no interest in said estate, and that said so-called Amalie Staehle

Roth desired a conveyance from her only for the purpose aforesaid, which was to enable her, said so-called Amalie Staehle Roth, without trouble and delay, to obtain what she was entitled to, independent of any conveyance from your oratrix, as your oratrix then understood and believed, and also did, that she would pay her ten thousand marks notwithstanding for the reason aforesaid she did, relying upon said representations so believed by her, and believing that such advice was given her for her benefit, hastily, imprudently, improvidently, ignorantly and without consideration or discretion, or other advice than that aforesaid, agree, in consideration of ten
28 thousand marks, then of the value of about one thousand nine hundred and fifty dollars, to make such a conveyance to said Amalie Staehle Roth so-called, and by direction of said Steiger signed a blank paper, over which has been, as she has been informed and believes, written what purports to be a conveyance of her interest in said estate, the contents of which she knows not, and which has never been in her possession, power or control, and that she cannot herein make an exhibit thereof.

That when she so signed her name said Amalie Staehle Roth so-called paid her one thousand marks, and verbally only promised to pay her nine thousand on the first day of July, A. D. 1877, and five per cent. interest from that time if not then paid.

That said Muller then demanded of her one hundred marks for his services in the matter, which astonished, but which she paid.

That her interest which so-called assignment purports to convey, if, as she has been informed it is as aforesaid, then was, as she has since been informed and believes, and now is, as she is informed and believes, of the value of more than one hundred thou-
29 sand dollars.

That she, on the day after the alleged making of it, went to see the grave of her husband.

That your oratrix charges that said Amalie Staehle Roth, Muller and Steiger were aware of the occasion of her presence aforesaid at said Schorndorf on said 26th day of September, and of the circumstances attending it, and that it affected her, as has been herein stated that it did, and of her disposition, infirmities, peculiarities, susceptibilities, credulity, confiding nature, ignorance of the value of her said husband's estate, and of her rights therein, her incapacity, her confidence in said Muller and Steiger, of their influence over her, and of her grief as aforesaid, and of the improbability of her having any information or advice upon the subject of said pretended agreement last aforesaid from another than themselves unless given without her request, or of her thinking that her interest in the matter required any, or of her rejecting their advice thereasto, or even reflecting whether she should, did regard such occasion and circumstances as presenting to them an opportunity for defraud-
30 ing her of her interest aforesaid, and that they did then conspire together so to do, and by their treatment of her and

acts and declarations aforesaid, and persistent, continued and resistless importunities with her, did induce her to agree to convey as aforesaid, and to at the dictation of said Steiger write her name on blank paper, over which, as she has been informed and believes, such pretended agreement with said so-called Amalie Staehle Roth has been written, which is voidable, as against her on account of such facts, as well as others herein stated.

That said so-called Amalie Staehle Roth and Albert Staehle at and before the time of the making of the pretended agreement aforesaid between your oratrix, said husband and herself, knew that it was obtained in the manner and for the purpose and under the circumstances aforesaid charged to have been, and that it is against public policy and public morals, and that if even fairly obtained it would not be a jointure for the reason herein before given, and knew the equities of your oratrix in the premises, including all those herein stated, or facts and circumstances that charge each of them with notice of all thereof.

31 That said forged deed purports to be witnessed by said so-called Amalie Staehle Roth, and that she, when it was forged, and before the making of said pretended one by said Albert Staehle to her, knew that it was a forgery, and also the equities of your oratrix in the premises, including those herein charged, or facts and circumstances that charge her with notice of all thereof.

That your oratrix on or about the 28th day of September, A. D. 1877, caused Charles Moser, then and now of Strassburg, in Germany, to for her at said Schorndorf, serve upon each said so-called Amalie Staehle and Albert Staehle a notice, in writing, signed, sealed and made by her on the 4th day of August, A. D. 1877, embracing the substance of her renunciation aforesaid, of which a copy is hereinbefore given, and authorizing said Charles Moser to for her and in her name tender to said so-called Amalie Staehle Roth one thousand marks, and the interest that had accrued thereupon, because, as is in each of said notices stated, your oratrix had rescinded the so-called agreement *alleged* to have been made between her and your oratrix. And that on that day said Charles Moser did for her and in her name, for said cause and purpose, make to said Amalie Staehle Roth so-called, such tender of

32 such amount and interest at said Schorndorf, stating to her when making it, that he made it by such authority and for such reason and purpose, as she is informed and believes, which tender she refused to accept, as your oratrix is informed and believes.

That your oratrix then was ready, able and willing to have paid to her said thousand *francs* and the interest that had accrued thereon, and on account of such rescission of such so-called agreement, and ever since has been and now is and offers to it, to her or as and when he may be directed to by the decree of this honorable court, copies of which said notices and the certificates thereon written are

herewith filed, marked respectively exhibits (B) and (C), hereof, and made part hereof.

Your oratrix prays that by the decree of this honorable court said renunciation be held as restoring to her all she claims therein, and herein, and to all her rights in said estate on such conditions as may be deemed equitable, as if said so-called agreement with her said husband had never been made.

Or that such agreement be rendered null and void and of no effect upon such conditions. And that said alleged agreement with said so-called Amalie Staehle Roth be rendered null and void,
33 and of no effect upon payment by your oratrix to her of said one thousand marks, and the interest that has accrued, and may accrue thereupon.

And that both of said pretended deeds be rendered null and void and of no effect.

And that said so-called Amalie Staehle Roth and Albert Staehle be required by such decree to within a time to be herein stated by them, sufficient deed in writing, convey to each said nieces, grandniece and nephews whatever portion of said real estate that may be by a decree of this honorable court herein allotted to each of them, subject to the right of dower aforesaid.

And to your oratrix what if any portion thereof, that may be so allotted to her in fee simple, and also a right of dower in the remainder thereof if so alloted to her, absolutely, or on such conditions as equity may require, to be stated in such decree. And that such decree provide that if they do not by such time make such conveyances, that one of the masters in chancery of this honorable court, or some one in it authorized to, shall make them, or what of them may not have been made as first herein provided for.

Your oratrix desires that this honorable court ascrtain and
34 declare the rights, title and interest of all the parties herein in the premises, and that partition be made of said real estate, and said rents and profits between said Frederica Ehman, Frederica Schweitcer, Frederica Henbach, Jacob Roth, John George Roth, Gotleib Roth, William Roth, Jacob Roth, Christian Roth, Johanes Roth, and your oratrix into the portions to which each is entitled as hereinbefore stated, if it can be without manifest prejudice to the owners thereof, and that if it cannot, that it be made into portions equalized by compensation.

And to have her said dower set apart and assigned to her, and an investiture of title by the decree of this honorable court herein in each of them, of her or his portion, so proportioned to her or him, or if partition cannot be so made in either of such ways without such prejudice to such interests that said realty be sold, and that the title to it be by such a decree invested in the purchaser or purchasers thereof, and that the proceeds of such sale or sales be divided, or and applied according to the interest of each of the parties herein, as are hereinbefore stated to have such interest, as such interest hereinbefore appears after payment of costs.

35 Your oratrix prays that said Frederica Ehman, Casper Ehman, Frederica Schweitcer, William Schweitcer, Frederica Henbach, Jacob Roth, John George Roth, Gotlieb Roth, William Roth, Jacob Roth, Christian Roth, Johanes Roth, Amalie Staehle Roth, so-called, Albert Staehle, John Gunzenhauser, Monroe N. Lorel, Robert McClellan, James B. Smith, Robert Bourzutchky, August Schafanser, The Nevada Loan Agency, George Buttenmuller, John Morgen, Gustav Labb, William B. Snowhook, Henry J. Christoph, Patrick W. Snowhook, William M. Johnston, George W. Gray, John C. Richberg, Frank Scoles Scoles, The Merril Manufacturing Company, Eli L. Canfield, Augustus G. Ashley, Wells Lake, Charles C. Lake, Frederic Simon Melitzer, Patrick Cummings and Bridget Walker be made defendants hereto, and that such partition of said real estate be made between said Frederica Ehman, wife of said Casper Ehman, in her own right, Frederica Schweitcer, wife of said William Schweitcer, in her own right. Frederica Henbach, Jacob Roth, John George Roth, Gotleib Roth, William Roth, William Roth, Christian Roth, Johanes Roth, and your oratrix, and for an assignment of her said dower to her if it can be made without manifest prejudice to such interest into the portions to which
36 each is entitled ashereinbefore stated, or if it cannot be so made, that it be made into portions with such compensation to which each in such case would be entitled, as hereinbefore stated.

And for an investiture of title by the decree of this honorable court herein in each of them, of his or her portion so partitioned to him or her.

And that if such partition cannot be made in either of the ways aforesaid without such prejudice to such interests that said realty be sold, and that the title to it be by the decree of this honorable court herein invested in the purchaser or purchasers thereof, and that the proceeds of such sale or sale or sales as the case may be, be divided, and applied according to the interests of such of the parties herein as are hereinbefore stated to be interested in said real estate, as such interest hereinbefore appears after the payment of costs.

And that said so-called Amalie Staehle, Albert Staehle, John Gunzenhouser may be by the decree of this honorable court required to account to each of said two nieces and seven nephews, and to said grand niece for one-thirtieth part of the rents and profits received by them as aforesaid, and to your oratrix for the remainder of them.

37 And that your oratrix have such other and further relief as in equity she should have.

That a summons in chancery be issued against said defendants, requiring each of them to appear before this honorable court on the first day of the next term thereof to be holden at the court house in the city of Chicago, and said county on the first Monday in the month of June, A. D. 1878, and answer this bill.

MADELAINE ROTH.

C. M. HARRIS, *Sol. for Comp't.*

This indenture, made this 11th day of September, in the year of our Lord one thousand eight hundred and seventy-six between Madelaine Roth, *nee* Moser, former wife of John George Roth, Schorndorf, Wurtemburg, Germany, now living in Schillingheim, near Strassburg, in Elsoss, Germany, and unmarried, party of the first part, and Albert Staehle, of Schorndorf, Wurtemburg, Germany, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged; and the said party of the second part forever released and discharged therefrom, has remised, released, sold, conveyed and quit-claimed, and by these presents does remise, release, sell, convey and quit-claim unto the said party of the second part, his heirs and assigns forever all right, title interest, claim and demand, which said party of the first part has in and to the following lots, pieces and parcels situate in the county of Cook and State of Illinois, and described as follows, to wit: lots thirteen (13) and sixteen (16), assessor's division of lots four (4) and five (5), block thirty-four (34), original town of Chicago, with the buildings situate thereon. Also lot eleven (11), in the assessor's division of lots seven (7) and eight (8), in block fifty-four (54), original town of Chicago, west half of lot three (3), block fifty (50), school section addition to Chicago, and lots one (1) to forty-six (46), inclusive, George Roth's subdivision of block seventeen (17), assessor's division of the north fourth ($\frac{1}{4}$) of the south-east quarter ($\frac{1}{4}$) of section twenty (20), township thirty-nine (39), north range fourteen (14), east of the third principal meridian.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining to the only proper use, benefit and behalf of the said party of the second part, his heirs and assigns forever.

And the said Madelaine Roth, *nee* Moser, party of the first part, hereby expressly waives and releases any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

In virtue whereof, the said party of the first part has hereunto set her hand and seal the day and year first above written.

MADELAINE ROTH, *nee* MOSER. [SEAL.]

Signed, sealed and delivered
in presence of

R. M. JACKSON,
AMALIE ROTH.

KINGDOM OF WURTEMBURG, *Stuttgart, ss:*

I, J. S. Potter, consul of the United States of America, in and for the Kingdom aforesaid, do hereby certify, that Made-

42 laine Roth, *nee* Moser, personally known to me to be the same person whose name is subscribed to the foregoing deed, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument of writing as her free and voluntary act for the uses and purposes herein set forth, including the. And the said release and waiver of the right of homestead, having been by me examined, separate and apart, and out of the hearing of husband, and the contents and meaning of the said in- ment of writing having been by me fully made known and explained to, and also by me being fully informed of rights under the homestead laws of this state, acknowledged that had freely and voluntarily executed the same, and relinquished dower to the lands and tenements therein mentioned, and also all rights and advantages under and by virtue of all laws of this state relating to the exemption of homesteads, without coupulsion of said husband, and that do not wish to retract the same.

Given under my hand and seal, office seal, this third day of October, A. D. 1876.

[OFFICIAL SEAL.] J. S. POTTER,
U. S. Consul.

To Albert Staehle, of Schorndorf, in the Kingdom of Wurtemburg:

43 Who will please take notice that I have rescinded and declared and held void and of no effect, and do hereby rescind, declare and hold as void and of no effect, the so-called agreement purporting to have been made on the 9th day of September, A. D. 1873, at Stuttgart, Germany, between my husband, John George Roth, then and at the time of his death of said Schorndorf, where he died on the 12th day of July, A. D. 1876, and myself, upon which I then received eight thousand dollars in bonds of the United States of North America.

And that I have rescinded and declared and held as void and of no effect the so-called contract purporting to have been made between the so-called Amalie Staehle Roth, of Schorndorf, in the Kingdom of Wurtemburg, and myself, at said Schorndorf, on the 26th day of September, A. D. 1876, in which it is stipulated, among other things, that she was to pay me ten thousand marks on the first day of July, A. D. 1877, and in case of delay five per cent. interest from that time, and of which she did then pay me one thousand francs.

For the reasons, among others, that each of said so-called agreements were procured in a fraudulent manner, and by surprise, fraud, falsehood, false representations, deception, treachery and un-
44 due influence practiced and imposed on me therefor when I was in such distress and so much disturbed in mind and oth-

erwise incapacitated as to have been unable to have protected my rights, had I known them, which I did not, and had no independent advice thereunto, and acted credulously, hastily and without consideration or discretion thereunto, and that I did not know or understand the contents of either of them.

And that each of them is against public policy and inadequate and unsuitable for me.

You will, therefore, also please take notice that I do hereby bind myself to pay to whomsoever is or may be entitled thereto, said eight thousand dollars, and all interest that has accrued and may accrue therefrom from the time I received it as hereinbefore stated until it is paid, and that if anyone is authorized to receive it I know not who is or to deduct the same or have it deducted from my interest herein asserted as the widow of said John George Roth, deceased.

And that while I signed said so-called agreement with my husband, said John George Roth, upon the representations made to me by him at and before the time of my signing it, that it was
45 to be made and was made only to secure me my support and not as a jointure between us nor as a release of my rights as his wife, which I believed when I signed it, and that while I would not have signed it had I not so believed.

Yet I, the surviving wife of said John George Roth, late of Schorndorf, in the Kingdom of Wurtemburg, when he died on the 12th day of July, A. D. 1876, do hereby renounce and quit all claim to the benefit of said so-called agreement and of my jointure given or assured to me in lieu of dower or dower, and anything else, or of anything, if any was ever so given or assured, and do elect to take in lieu thereof one-half of the real estate and the whole of the personal estate of said John George Roth, deceased, after the payment of all just debts against said estate as an absolute estate in me forever, and the dower to which I am or may be entitled in said estate as the widow of said John George Roth, deceased.

And also in real estate of which he was seized of an estate of inheritance during the coverture between him and me, which terminated only with his death. And in all real estate of which he was seized in equity during such time. And in real estate contracted for by him in his lifetime the title to which has been completed since his death, or may be.

46 And you will also please take notice that, intending to tender to said so-called Amalie Staehle Roth said one thousand marks, and all interest that has accrued and may accrue thereupon from the time that I received it as hereinbefore stated until such tender is made, I have made, constituted and appointed Charles Moser, of Strassburg, Germany, my lawful attorney in fact, to, for me and in my name make such tender to said Amalie Staehle Roth, and that I hereby ratify whatever he may lawfully do thereasto in making such tender, and that I have executed to him, as my lawful

attorney in fact, a general power of attorney, by which he is, among other things, authorized to make such tender as aforesaid, and that it will be recorded in the proper office in said Schorndorf.

And that I hereby release said so-called Amalie Staehle Roth from the payment of the nine thousand marks, the remainder of said ten thousand marks, and from all liability on said so-called contract purporting to have been made between her and myself, and renounce all benefit therefrom.

Signed and sealed by me at Chicago, Illinois.

August 24th, 1877.

MADELAINE ROTH. [SEAL.]

48 CHICAGO, the 27 August, 1877.

[SEAL OFFICIAL SEAL.] THE GERMAN EMPIRE CONSUL,
DR. F. KINKLE.

To Amalie Staehle Roth, so called, of Schorndorf, in the Kingdom of Wurtemburg:

Who will please take notice that I have rescinded and declared and held void and as of no effect, and do hereby rescind and declare and hold void and of no effect, the so-called agreement purporting to have been made on the 9th day of September, A. D. 1873, at Stuttgart, Germany, between my husband, John George Roth, then and at the time of his death, of said Schorndorf, who died there on the 12th day of July, A. D. 1876, and myself upon which I then received eight thousand dollars in bonds of the United States of North America.

And also, that I have rescinded and declared and held as void and of no effect, and do hereby rescind, declare and hold as void and of no effect, the so-called contract purporting to have been made between you and myself, at said Schorndorf, on the 20th day of September, A. D. 1876, in which it was stipulated among other things, that you were to pay me ten thousand marks on the first day of July, A. D. 1877, and in case of delay five per cent. interest from that time and of which you did then pay me, one thousand
49 marks.

For the reasons among others that each of said so-called agreements were procured in a fraudulent manner and by surprise, fraud, falsehood, false representations, deception, treachery and undue influence practiced and imposed on me therefor when I was in such distress and so much disturbed in mind and otherwise so incapacitated as to have been unable to have protected my rights, had I known them, which I did not, and had no independent advice thereasto, and acted credulously, hastily and without consideration or discretion thereasto, and that I did not know or understand the contents of either of them.

And that each of them is against public policy, and inadequate and inequitable for me.

You will therefore please take notice that I do hereby bind myself to pay to whomever is or may be entitled thereto said eight thousand dollars and all interest that has accrued and may accrue thereupon from the time I received it as hereinbefore stated until *lid* in paid. And that if any one is authorized to receive it, I know not who is, or to deduct the same or have it deducted from my interest herein asserted as the widow of said John George
50 Roth, deceased.

And that while I signed said so-called agreement with my said husband, said John George Roth, upon the representations made to me by him, at and before the time at my signing it, that it was to be made and was made only to secure me my support and not to be a jointure between us nor a release of any rights as his wife, which I believed when I signed it, and that while I would not have signed it had I not so believed.

Yet I, the surviving wife of said John George Roth, late of Schorndorf, in the Kingdom of Wurtemburg, who died there, on the 12th day of July, A. D. 1876, do hereby renounce and quit all claim to the benefit of said so-called agreements and of any jointure given or assured to me in lieu of dower or dower and anything else or of anything, if any was ever so given or assured, and do elect to take in lieu thereof, one-half of the real estate and the whole of the personal estate of the estate of said John George Roth, deceased, after the payment of all just debts against said estate as an absolute estate and forever and the dower to which I am or may be entitled in said estate, as the widow of said John George Roth,
51 deceased. And also in real estate of which he was seized of an estate of inheritance during the coverture between him and me, which terminated only with his death, and in all real estate of which he was seized in equity during such time, and in real estate contracted for by him in his lifetime, the title to which has been completed since his death or may be.

And you will also please take notice, that intending to tender you said one thousand marks and all interest that has accrued and may accrue thereupon, from the time that I received it, as hereinbefore stated, until such tender is made, I have made, constituted and appointed and do hereby make, constitute and appoint Charles Moser of Strassburg, Germany, my lawful attorney in fact, to for me and in my name make such tender to you, and that I hereby ratify whatever he may lawfully do thereasto in making such tender, and that I have executed to him, as my lawful attorney in fact, a general power of attorney, by which he is among other things authorized to make such tender as aforesaid, and that it will be recorded in the proper office in Schorndorf.

And that I hereby released you from the payment of the nine thousand marks, the remainder of said ten thousand marks, and
52 from all liability on said so-called contract purporting to have

been made between you and myself, and renounce any benefit therefrom.

Signed and sealed by me at Chicago, Illinois, August 24th, 1877.

MADELINE ROTH. [SEAL.]

The joint and several answers of *Amalie Staehle Roth* and *Albert Staehle* to the bill of complaint filed herein by said *Madelaine Roth.*

81 These defendants, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill contained, for answer thereunto, say,

That they admit the pretended marriage of said John George Roth and said Madelaine Roth, as in said bill alleged, but deny its validity.

They admit the death of said John George Roth to have been on the 12th day of July, A. D. 1876, as in said bill alleged, and that he left no child, nor descendants of any child him surviving, neither did he leave any father or mother, but that he left brothers and sisters and their descendants surviving him, as in said bill alleged.

But they deny that said John George Roth left him surviving the said Madelaine Roth, as his widow or heir at law.

And further answering, they admit, that for several years prior to his death and up to the 12th day of July, A. D. 1876, said John George Roth was the owner in fee simple of the premises

82 described in said bill of complaint, but they deny that he was the owner thereof at the time of his decease.

These defendants, further answering, deny, that said Frederica Ehman, Frederica Schweitcer, Frederica Henbach, Jacob Roth, John George Roth, Gotleib Roth, William Roth, Jacob Roth, Christian Roth and Johannes Roth, became or were the heirs at law of said John George Roth, deceased, at the time of his death, and deny that they inherited or became the owners in fee simple of one undivided twentieth part of the premises in said bill described, and they deny that they became the owners of any other interest in said premises at the time of, or by virtue of the death of said John George Roth, or in any other way.

And they deny that said Madelaine Roth became, at the death of said John George Roth, seized in fee simple of the undivided half of all of said estate after the payment of all just debts against his estate.

And they deny that she became entitled to a right of dower in the other half of his real estate.

And they deny that by virtue of the death of said John George Roth, said Madelaine Roth became entitled to any portion

83 of said premises, or of any interest, rents, issues or profits growing out of the same.

And further answering, they deny that said Madelaine Roth is

the widow of said John George Roth, but they allege that this defendant Amalie Staehle Roth is the widow of said John George Roth.

These defendants, further answering, say, they do not know what the said Madelaine Roth may have done with the eight thousand dollars ($8,000) received by her of the said John George Roth, and leave her to strict proof in regard thereto, if she may deem it necessary.

These defendants, further answering, deny that said John Gunzenhouser and these defendants have wrongfully received all the rents and profits of said premises that have accrued therefrom since the death of said John George Roth.

And they deny that these defendants or John Gunzenhouser are bound to account to said complainant for such rents and profits.

Further answering, these defendants do not know whether any child was ever born unto said John George Roth and said Madelaine Roth, and afterwards died, as alleged in said bill, but
84 they allege that he did not leave any child him surviving at the time of his death.

That they do not know what said John George may have said unto said Madelaine Roth in the year 1856, in regard to leaving America, nor do they deem it of any consequence.

They admit that said John George Roth, together with said Madelaine, did leave the city of Chicago for the purpose of returning to Europe, and that they did arrive in Europe sometime during the year 1856, but to what place they may have gone in the first instance these defendants are unable to state.

But these defendants allege, however, that said John George Roth and said Madelaine Roth did in the latter part of the year 1856, return to Schorndorf, in the Kingdom of Wurtemberg, where they remained thereafter and up to the time of the divorce between John George Roth and the said Madelaine Roth as hereinafter stated, and that said John George Roth did continue to reside in the Kingdom of Wurtemburg from the time of his arrival there in the year 1856, up to the time of his death, which took place on July 12, 1876, at which place he was continually domiciled from the
85 time of his arrival up to the time of his death.

These defendants deny the allegation in said bill contained of adultery between said Amalie Staehle and said John George Roth as in said bill alleged.

These defendants, further answering, say that they do not know whether said John George Roth compelled said Madelaine to do the work of the lowest menial or how he treated her, but they nevertheless deny the allegation pertaining to the same.

These defendants deny that said John George Roth did any acts forcing said Madelaine Roth to leave him.

These defendants do not know as to the loss of health on the part of said Madelaine nor in regard to the fears that she entertained of said John George Roth.

And, further answering, these defendants do not know when said Madelaine Roth left her said husband nor when she returned to her father's house in Strassburg nor how long she remained there, if at all, nor do they know when she came to the city of Chicago.

These defendants, further answering, say they do not know
86 what provisions said John George Roth may have made for said Madelaine Roth on or during the year 1873, except as stated by her in her said bill of complaint.

That they do not know what representations said John George Roth may have made to said Madelaine Roth at the time she made application to him for support, and hence they deny that he made the allegations or statements to her as set out in said bill of complaint and call for strict proof of the same.

These defendants admit that said John George Roth did pay unto said complainant the said sum of $8,000 upon the receipt of which by her she executed and delivered to said John George Roth on or about the 9th day of September, A. D. 1873, a receipt therefor, and a release on her part of all interest in or to any of his property, which said instrument in writing was in the German language, and was in substance as follows:

"The undersigned, Madelaine Roth nee Moser, born in Bisch-
"weiler and at this time residing is Schittigheim, near Strassburg,
"certifies hereby that she has to-day received from John George
"Roth, now her divorced husband, in Schorndorf, in the supe-
87 "rior court, district of Schorndorf, as her settlement, the sum
"of eight thousand dollars in six per cent. United States
"bonds, with all current coupons attached thereto, and she acknowl-
"edges herewith that she on the strength of these premises sur-
"rendered all and every demand or right she may have against said
"Roth or his property. Stuttgart, September 9th, 1873.

"Upon distinct reading signed:

"MADELAINE ROTH nee MOSER."

Which said instrument and release was duly acknowledged by her before the proper officer at Stuttgart.

And that there was attached to said release another instrument executed on the same day by the said John George Roth and said Madelaine Roth in substance as follows.

That they both admit that they were on the 24th day of April, A. D. 1873, divorced by the divorce court at Ellwangen, and they further declare that in pursuance of the property settlement made by them, as was the custom of the place, they released all claims of inheritance from each other as well in their own names as in that of their heirs, and that they waive every objection against said set-
88 tlement, and they therein admitted that they fully understood and confirmed the said settlement and release hereinbefore mentioned.

Signed at Stuttgart, September 9th, 1873, by John George Roth

and Madelaine Roth, which said declaration was duly acknowledged and certified to by the Royal Notary, to which was also attached a certificate of the United States Consul at Stuttgart.

And these defendants, further answering, allege, that said John George Roth was a citizen of the Kingdom of Wurtemburg at the time of the pretended marriage between him and the said Madelaine Roth, and that he continued a subject and citizen of said Kingdom of Wurtemburg up to the time of his death, which occurred on the 12th of July, A. D, 1876, and that from the year A. D. 1856 up to the time of his death, he, the said John George Roth, was domiciled at Schorndorf, in the Kingdom of Wurtemburg.

That on the 24th of April, A. D. 1873, and for many years prior thereto and ever since that time the laws of the Kingdom of Wurtemburg are to the effect that no marriage of any of its citizens consummated without the consent of the government of the
89 Kingdom of Wurtemburg should be valid and binding, but that all such marriages of any of its citizens were null and void, and would be considered as if such pretended marriage had never taken place.

That on the 24th day of April, A. D. 1873, the Royal Matrimonial Court of Ellwangen, in the Kingdom of Wurtemburg, entered a decree of nullity of the said pretended marriage between said John George Roth and said Madelaine Roth, and that the basis of said decree was to the effect that the said pretended marriage between said John George Roth and the said Madelaine Roth *nee* Moser was had without permission from the government of Wurtemburg to marry, and the said pretended marriage was then and there declared null and void, which said decree of nullity is still in full force and effect.

That said matrimonial court had jurisdiction of the subject matter of said proceeding, and also of said Madelaine Roth and of said John George Roth, and that said settlement between said John George Roth and said Madelaine Roth was made and had after said decree of nullity and the relinquishment of all her right, title or interest in or to any of said property was so made by said
90 Madelaine after the granting of said decree of nullity.

These defendants, further answering, say that they do not know when or where the said Madelaine Roth was born, but they deny the allegation that she has little capacity for business, and allege that she is fully competent to transact business, and had full information with reference to the estate of said John George Roth, at the time of the said settlement betwixt himself and her, above set out, and that she was not misled by any false misrepresentation made by the said John George Roth, but that she acted upon the fullest information, and of her own free will.

That they do not know whether she is credulous, confiding, forgiving, inconsiderate, unreflective, unwary, very susceptible to imposition, and subject to surprise and the influence of others, and leave

her to prove all of the aforesaid allegations if she deem it material.

And they deny expressly the allegation that said John George Roth never gave her any information of his business or pecuniary circumstances, and that she never knew much thereof until since the 26th day of September, A. D. 1876.

91 These defendants deny that said Madelaine never received a letter from the United States nor had any conception of what said John George Roth owned in said United States.

They deny her allegation of want of knowledge as to the contents of said release above set out, and they allege that she had full knowledge at the time that she signed said instrument that she had been divorced from said John George Roth.

And they deny the allegation that she never intended to release her claims.

And also the allegation to the effect that she never supposed that she had releassd her claims to the estate of the said Roth.

They deny the allegation that on the 9th day of September, A. D. 1893, the property of said John George Roth, exclusive of his real estate aforesaid, set out in said bill, was of the value of more than $60,000.

And they deny the allegation that said real estate at the time aforesaid was of the value of more than $125,000.

And they deny the allegation that the annual rents aforesaid were of the value of more than $5,000.

And they deny the allegation that after the erection of the buildings as in said bill set out that said real estate was of the value of more than $150,000.

92 And they deny the allegation that the rental value of said real estate was more than $12,000 annually, but they allege that the value of said property, real and personal, was nothing like the value as alleged and set out in said bill of complaint.

And they deny further the allegation that the improvements made in the year A. D. 1874, by said John George Roth upon said real estate cost more than thirty-two thousand dollars.

And further answering, these defendants deny that said Madelaine signed the instrument of release above set out by reason of or during the confidential relation of husband and wife existing between them at the time, and they again allege that said complainant and said John George Roth were not husband and wife at the time aforesaid.

And they deny the allegation that she was without any independent advice at the time she so executed said instrument.

And they deny the allegation that she did not understand said instrument.

Also, they deny the allegation that she had little conception of his pecuniary circumstances or of her rights at that time.

93 And they deny that she relied upon any false representations made by her said husband at that time, or at any other time.

And they deny that he made any false representations to her for the purpose of procuring her signature to said instrument or for the purpose of defrauding her.

And they deny that said instrument so signed by her is void as against her on any grounds set out in said bill, or upon the ground of public morals, as alleged by her.

And they deny all the insinuations made by her with reference to the illicit and unlawful relations between said Roth and said Amalie Staehle Roth, as is falsely alleged in said bill.

These defendants, further answering, say that they do not know what instrument she may have made on or about the 3d day of November, A. D. 1877, and filed in the county court of Cook county, Illinois, as alleged by her, but call upon her for strict proof in regard thereto if she may deem it material.

That on or about the 27th day of November, A. D. 1873, this defendant, Amalie Staehle Roth, she being then an unmarried
94 woman, and the said John George Roth, he being then an unmarried man, intermarried, and thereupon she became the lawful wife of the said John George Roth, and continued so to be until the time of his death, and is now his lawful widow.

And these defendants, further answering, allege that on or about the 28th day of March, A. D. 1874, the said John George Roth and this defendant, Amalie Staehle Roth, made and entered into a marriage contract in accordance with the laws of the Kingdom of Wurtemburg, wherein and whereby it was provided that if this defendant, Amalie Staehle Roth, should live longer than the said John George Roth, and he should die childless, that she should have all of his property of every description, in consideration of said marriage, and should thereupon pay to his brothers and sisters the sum of 80,000 florins, and the rest and residue of his estate should fall to her absolutely, wherever the same might be situate. That said marriage contract was drawn up and executed in the German language, and is properly attested, and is ready to be exhibited to this honorable court.

That afterwards, and on the 12th of July, A. D. 1876, the said John George Roth, for a valuable consideration, then agreed
95 to be paid, transferred unto this defendant, Albert Staehle, all of said real estate in said bill described by an instrument duly executed, which was written and executed in the German language, and which is ready to be produced as the court may direct. That said instrument is not under seal, but the same is sufficient in a court of equity for the purpose aforesaid, and sufficient for the transfer of the equitable estate of said premises. That said transfer was subject to the rights of this defendant, Amalie Roth, under said post nuptial agreement.

These defendants, further answering, say that after the death of said John George Roth, and after the publication of said contract of sale by said Roth unto said Staehle, made on the 12th day of July,

A. D. 1876, as above set out, this defendant, Amalie Staehle Roth, in due form of law, acceded to the said contract of sale or deed in every particular, and thereupon in writing ratified the same, and released all her right to make any exception to the same for any reason which said ratification and approval was made and executed on the 27th day of July, A. D. 1876.

That on the 28th day of July, A. D. 1876, this defendant, Amalie Staehle Roth, executed and delivered unto said Albert Staehle
96 a power of attorney, granting unto him all powers of every description necessary for the management of said property, and its sale or conversion, and ratifying everything that he might do pertaining to said property above described.

That afterwards, and on or about the 8th day of September, A. D. 1877, this defendant, Amalie Roth, for a valuable consideration, executed and delivered unto said Albert Staehle a deed of conveyance of all her right, title and interest in and to the premises described in said bill, which said deed was duly executed and acknowledged, and was filed for record in the recorder's office of Cook county, of Illinois, on October 24th, A. D. 1877, and was recorded therein in book 776 of records, at page 198.

That by deed, dated June 29, A. D. 1877, said Frederica Ehman and Casper, her husband, said Frederica Schweitcer and William Schweitcer, her husband, for a valuable consideration, conveyed all their right, title and interest in and to the premises in said bill described, which said deed was duly executed and acknowledged, and was filed for record in the recorder's office of Cook county, Illinois, on October 24, A. D. 1877, and was recorded in book 776 of records, at page 196.

97 That by deed, bearing date October 31, A. D. 1876, said defendant, Jacob Roth, for a valuable consideration paid, conveyed unto this defendant, Albert Staehle, all his interest in the premises in said bill described, which said deed was duly executed and acknowledged, and was filed for record in said recorder's office, on the 1st day of May, A. D. 1877, and was recorded therein in book 508 of records, at page 378.

That by deed, bearing date October 31, A. D. 1876, said defendants, Gotleib Roth and Frederica W. E. Roth, his wife, conveyed unto said Albert Staehle, for a valuable consideration, all their right, title and interest in and to the premises in said bill described, which said deed was duly executed and acknowledged by said grantors, and was filed for record in said recorder's office, on May 1, A. D. 1877, and was recorded therein, in book 508 of records, at page 379.

That by deed, bearing date December 20, A. D. 1876, said defendant, John George Roth, sometimes called Johann George Roth, conveyed all his right, title and interest to all the premises in said bill described, unto this defendant, Albert Staehle, which said deed of conveyance was duly executed and acknowledged,

98 and was filed for record in said recorder's office, in Cook county, Illinois, on December 21, A. D. 1876, and was recorded therein in book 350 of records, at page 570.

That by deed, bearing date June 29, A. D. 1877, said defendant, Johannes Roth and Christian Roth, his wife, and said defendant, Jacob Roth and Marie Roth, his wife, and said defendant, William Roth and Caroline Roth, his wife, for a valuable consideration, conveyed all their right, title and interest in and to the premises in said bill described unto this defendant, Albert Staehle, which said deed of conveyance was duly executed and acknowledged, and was filed for record in the recorder's office of Cook county, Illinois, on October 24, A. D. 1877, and was recorded therein in book 776 of records, at page 194.

And these defendants, further answering, say, that the consideration for the deeds of conveyance aforesaid by the said heirs-at-law of said John George Roth, was the money which was provided for in said post nuptial contract between said John George Roth and this defendant, Amalie Staehle Roth, which said sums of money so provided in said post nuptial contract were fully paid unto said heirs-at-law, in accordance with the provisions of said post
99 nuptial contract, and by agreement betwixt said Albert Staehle and said heirs-at-law. And that said heirs-at-law fully understanding the facts and all their rights in the premises, made said deed of conveyance, quit claiming any interest they might have in any way unto said premises, in the manner above set out. And that all said settlements and deeds of conveyance were made to said Albert Staehle, by order and direction of this defendant, Amalie Roth.

And these defendants, further answering, say that by reason of said decree of nullity of the said pretended marriage between the said John George Roth and the said Madelaine Roth, and by reason of the release of all the rights and claims of said Madelaine Roth in and to the property of said John George Roth and of the payment of the sum of $8,000 unto her, on September 9, A. D. 1873, which said receipt and release are herein above set out, and that by reason of the intermarriage of said John George Roth and this defendant, Amalie Staehle Roth, and by reason of the post-nuptial agreement betwixt them, as herein above set out, and by reason of the contract of sale or deed of conveyance executed
100 on September 12th, A. D. 1876, and delivered unto said Albert Staehle, and by reason of the confirmation of said contract, or deed of sale by this defendant, Amalie Roth, and by reason of the various deeds of conveyance herein above set out, and for other reasons, she, the said Madelaine Roth, has no interest whatever in or to any of the premises in said bill described.

And this defendant, further answering, alleges that notwithstanding the facts herein above set out, she, the said Madelaine Roth, after the death of said John George Roth, with full understanding of all

the facts and of all her pretended rights and claims in and to the estate of said John George Roth, and after full knowledge of all the estate which was possessed or owned by said John George Roth, at or before the time of his decease, she, the said Madelaine Roth, made a further demand for a portion of the estate of said John George Roth, and that said Amalie Roth, in order to be relieved from all demands, and for the purpose finally settling, compromising and compounding all claims, if any, that she might have, did then and there on said 26th day of September, A. D. 1876, enter into a written agreement, release and assignment with the
101 said Madelaine Roth, and signed by both of them, wherein and whereby it is recited that said Madelaine Roth was fully aware of the said decree of nullification of her marriage with said John George Roth, and that she did therein and thereby renounce all claims to the estate of said John George Roth, which she might have under or by virtue of the laws of the State of Illinois, or by virtue of the laws of the Kingdom of Wurtemburg, either as heir or as widow or otherwise, and she did therein and thereby assign all of her rights or supposed rights, if any, unto this defendant, Amalie Roth, and it was therein recited that she had received the $8,000.00 on September 9, 1873, in settlement of all her claims, and which has been hereinbefore set out, and that in addition to said sum of $8,000.00, and in consideration of the execution of said receipt, a further release of all her claims, if any, the said Amalie Roth agreed to pay unto her, the said Madelaine Roth, by the first day of July, A. D. 1877, the sum of 10,000 marks, and in case said sum should not be paid by July 1st, A. D. 1877, that the same should run with interest at the rate of five per cent. per annum. That she not only
102 thereby released all of her rights in said estate of said John George Roth, if any, in the State of Illinois or elsewhere, but she assigned the same, if any, unto this defendant Amalie.

That said agreement, release and assignment was duly executed by both the said Madelaine and this defendant Amalie, and was duly acknowledged before the proper officers and the same was made with full knowledge and full comprehension of the facts of the case on the part of said Madelaine Roth.

That in pursuance of said last mentioned agreement 1,000 marks have been paid unto said Madelaine Roth.

That afterwards, in order more fully to carry out the intention of said agreement and settlement between said Madelaine Roth and this defendant, Amalie, she, the said Madelaine Roth, executed and delivered unto this defendant, Albert Staehle, on or about October 3rd, 1876, a deed of conveyance wherein and whereby she conveyed unto said Albert Staehle, at the direction of this defendant, Amalie Roth, all of the premises described in said bill of complaint, which said deed of conveyance was duly executed and ac-
103 knowledged by said Madelaine Roth, and was filed for record in the recorder's office of said Cook county, on the 7th

day of November, A. D. 1876, and was recorded therein in book 350 of records, at page 498.

That she, the said Madelaine Roth, had full knowledge of all the transactions hereinbefore set out, and acted upon full information, and that said agreement of September 26th, 1876, and said deed last mentioned were executed by said Madelaine Roth, by way of settlement and compromise of a disputed claim, upon her part, to an interest in the estate of said John George Roth, and that she fully accepted said settlement and executed said deed in full satisfaction of all such pretended claim upon her part.

And these defendants, further answering, deny the allegation of said complainant that the said deed hereinbefore set out of the said Madelaine Roth unto said Albert Staehle, is forged.

And these defendants, further answering, say, that they do not know when she first obtained intelligence of the death of her husband, nor whether his death caused her much sorrow or grief, nor whether she loved him, nor whether he abused her as
104 alleged in said bill, but leave her to prove the same, if deemed necessary.

That they do not know what sentiments actuated her in visiting Schorndorf, immediately after the death of said John George Roth.

That these defendants do not know who requested said complainant to go to see this defendant, Amalie Roth, nor does she know what reply said Madelaine made to the person who so requested her, nor are these defendants able to state, nor do they deem it necessary, and neither can they affirm nor deny the sentiments of grief or sorrow or affection which actuated the said complainant.

That they do not know what representations were made to her, by one Louis Muller, nor do they know the replies made by her to said Louis Muller, with reference to her divorce from said John George Roth.

And these defendants, further answering, say, that they do not know that said Muller told said Madelaine that he had arranged the matter of her claims, nor do they know whether he told her that she had no right whatever to claim anything from the estate of said John George Roth, nor do they know whether said Muller
105 told her that this defendant, Amalie Roth, would give her ten thousand marks, nor does she know the reason for such statement, in case said Muller did so tell her.

That these defendants do not know whether said Madelaine Roth believed or thought she had any rights in the estate of said John George Roth, but they do allege that she did not then have any interest in the estate of said John George Roth.

And further answering, they deny the allegation that she was ignorant of the pecuniary circumstances of said John George Roth or of her rights in his estate.

These defendants, further answering, deny the allegation that she did not at the time of her visit to Schorndorf after the death of her

husband, as related in said bill, know her rights, and they also deny the allegation that she didn't have the capacity for understanding them.

That this defendant, Amalie Roth, does not remember the conversation which took place betwixt her and the said Madelaine Roth further than that her rights in the estate of said John George Roth were fully discussed, and a settlement was then and there
106 made between them and an instrument carrying the same into effect, was executed by them on the 26th day of September, A. D. 1876, as hereinbefore set out.

And these defendants, further answering, deny the allegation to the effect that this defendant, Amalie Roth, told her that said John George Roth had made a will and devised his property to his relations.

These defendants admit that said Madelaine Roth was kindly treated upon the occasion of said visit, above referred to, and that she was fully informed of all the circumstances regarding the estate and property of said John George Roth, and they allege that she had advice with reference to her interest in said estate.

And these defendants further state that they do not now remember whether the said Madelaine was informed by the said Amalie that she, the said Madelaine, had no interest in the estate of said Roth, but they presume that she was so informed and such was the fact.

And these defendants allege that on account of the pretenses and claims of said Madelaine to have an interest in the estate of said John George Roth, and in order to prevent trouble and liti-
107 gation she, the said Amalie, did offer to pay the said Madelaine the sum of 10,000 marks by way of settlement of all such pretended claims, and that she did it for the purpose of buying her peace and for no other consideration, and that such transaction was for the benefit of said Madelaine.

And these defendants, further answering, deny the allegations that the said paper embodying the transaction bearing date September 26th, A. D. 1876, was signed in blank, as is untruly alleged in said bill of complaint, nor was the said deed executed in pursuance of said agreement, and for the purpose of more fully carrying the same out as hereinabove set out, signed in blank, and all of said instruments were duly executed and acknowledged in the presence of legal officers, the contents having been fully explained and made known to her, the said Madelaine Roth, by such legally constituted officers.

They admit that this defendant, Amalie Roth, paid her one thousand marks, but deny the allegation that the other nine thousand marks promised to her was merely verbal, but allege that
108 the same was fully agreed to and promised in the instrument of writing before set out and referred to, which bears date September 20th, A. D. 1876, and in that instrument she, the said

Amalie agreed to pay her by July 1st, 1877, 10,000 marks, and in case of default in the payment thereof, on the 1st day of July, A. D. 1877, agreed to pay her interest at the rate of five per cent. thereon. All of which was in writing, as hereinbefore stated, and that she, the said Madelaine now refuses to receive said additional sum of 9,000 marks, as above agreed upon, but which sum these defendants hereby tender and offer to pay.

These defendants, further answering, do not know whether said Madelaine paid the said Muller the sum of 100 marks for his services in the transaction above related.

And these defendants, further answering, deny the allegation of said bill, to the effect that the interest of said Madelaine Roth in the estate of said John George Roth, and which the instrument executed by her purports to convey, was then, or is now of the value of more than $100,000.00, but they allege that her interest in the estate of said Roth, deceased, was not then of any value, and that she had no interest therein.

109 These defendants, further answering, deny the allegation, that the sole purpose of the visit of said Madelaine Roth to Schorndorf upon the occasion when said agreement was made and entered into, which was on the 26th day of September, A. D. 1876, was for the purpose solely of visiting the grave of her husband and cultivating her sentiments, but they allege that her sole purpose in her visit to Schorndorf was to lay claim to some portion of the estate of said John George Roth, and to compel these defendants to buy their peace of her, and that such visit resulted as hereinabove set out, and was made for the purpose of securing such a result.

And these defendants, further answering, again deny that said Amalie Roth and said Muller and Steiger, conspired together, to cheat or defraud her in any way, but they allege that said Madelaine called upon said Muller and advised with him in reference to her rights in said estate, and that he was her confidential adviser in the matter. And that said Muller was in no sense the adviser of this defendant, Amalie.

110 And they, further answering, deny that said agreement of September 26th, A. D. 1876, is voidable by complainant on account of the facts detailed in said bill of complaint, or for any other reason.

And they deny that the agreement entered into between said complainant and this defendant Amalie, or between said complainant and said John George Roth, is void or voidable upon the ground of public policy, or that the same was against public morals.

And further answering, they deny that they had any notice at the time of said agreement betwixt this defendant, Amalie, and said complainant, or at any other time that said complainant had any rights in the property in said bill set forth.

These defendants deny that said complainant has tendered to these defendants, or either of them, the one thousand marks paid to her by this defendant, Amalie, as hereinbefore set out.

And they further deny that said complainant has in any manner rescinded the contract of September 26th, 1876, or the deed hereinabove set out, or any of the instruments before executed by
111 her, the said complainant, and which are hereinbefore set out.

And these defendants deny all unlawful combination and confederacy in said bill charged, without that any other matter or thing material or necessary for these defendants to make answer unto, and not herein well or sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants, all of which matters and things these defendants are ready to aver, maintain and prove as this honrable court shall direct, and humbly pray to be hence dismissed with their reasonable costs.

ALBERT STAEHLE.
AMALIE STAEHLE ROTH.
By ROSENTHAL & PENCE,
Their Sol'rs.

ROSENTHAL & PENCE,
Sol'rs and of Counsel.

119 STATE OF ILLINOIS, *County of Cook:*

May term, A. D. 1879, of the superior court of said county. To the honorable the judge of said court, in chancery sitting:

Your oratrix, Madelaine Roth, of the city of Chicago, and county aforesaid, respectfully represents that on the fourth day of May, A. D. 1878, she made and filed in this court, against Frederica Ehman, Casper Emae, Frederica Schweitcer Ehman, William Schweitcer, Frederica Haubach, Jacob Roth, John George Roth, Gottleib Roth, William Roth, Jacob Roth, Christian Roth, James Roth, Amalie Staehle Roth, John Gunzenhauser, Monroe N. Lord, Robert McClellan, James B. Smith, Robert Bourzutchky, August Schafauser, The Nevada Loan Agency, George Buttersmuller, John Mergen, Gustav Labb, William B. Snowhook, Henry J. Christoph, Patrick W. Snowhook, William M. Johnston, George W. Gray, John C. Richberg, Frank Scales, The Merrill Manufacturing Company, Augustus G. Ashley, Wells Lake, Charles C. Lake, Frederick Simon
120 Mulitzer, Patrick Cummings, and Bridget Walker, Eli L. Canfield, as defendants thereto, alleging, as therein stated, and praying a partition of lots thirteen and sixteen, in assessor's division of lots four and five, in block thirty-four of the original town of Chicago. Lot eleven in assessor's division of lots seven and eight, in block fifty-four of the original town of Chicago.

The west half of lot three, in block fifty, in school section addition to the city of Chicago, and lots numbered one to forty, inclusive, of George Roth's subdivision of block seventeen of assessor's divi-

sion of the north quarter of the southeast quarter of section twenty, in township thirty-nine north, of range fourteen east, and the county aforesaid, by allotting and setting apart to her as her sole and separate property forever, one-half of said real estate, and setting apart to her, her dower in the remainder thereof, and two-thirds of all the rents and profits of all thereof that have accrued since the
121 death of John George Roth, who, at the time of his death, was her husband subjected to the payment of eight thousand dollars, with the interest that has accrued thereon since the day of A. D. or upon payment thereof, on such conditions as equity requires. And by allotting and setting apart to each said Frederica Ehman, Frederica Schweitcer, Frederica Haubach, Jacob Roth, John George Roth, Gottleib Roth, William Roth, Jacob Roth, Christian Roth, and Johannes Roth, one-twentieth of all of said real estate subject to such dower, and to one-thirtieth part of all the rents and profits of all thereof which has accrued since the death of said John George Roth, deceased, who died intestate on the 12th day of July, A. D. 1876, if such a partition of such realty and assignment of dower could be made without manifest prejudice to such interest, and that if it could not be so made, that it be made into portions with pecuniary compensation therewith to
122 which each would be entitled, and for an investiture of title by the decree of this court herein in each of them to his or her portion so portional to him or her. And that if such partition could not be made in either of such ways without such prejudice to such interest, that said real estate be sold, and that the title to it be by the decree of this court herein invested in the purchaser or purchasers thereof, and that the proceeds of such sale or sales, as the case may be, be divided and applied according to such interests after the payment of costs. And praying also that said so called Amalie Staehle Roth, Albert Staehle, and John Gunzenhauser, be, by a decree of this court, required to account to each of the parties interested in said rents and profits aforesaid, in proportion to his or her interest therein, hereinbefore stated for such rents and profits received by them since the death of said John George Roth.

123 That summons was duly issued in this suit against all of said defendants and returned as to said Albert Staehle; that he could not be found in said county, and that as to him and others notice by publication as required by statute in such cases was duly given.

And that he, together with said Amalie Staehle Roth, so called, put in their joint answer to said original bill.

That on or about the 10th day of December, A. D. 1878, at Schorndorf, in the Kingdom of Wurttemberg, said Albert Staehle died intestate, leaving surviving him Mathilda Staehle, his widow, Albert Staehle, Emma Staehle, Julia Staehle, Mathilda Staehle, Eugene Staehle and Alfred Staehle, his only children and heirs at law.

That there is not in said kingdom any such or like officer as an administrator or executor, or legal representative of a deceased person or of his estate, and that decedent last aforesaid nor his estate has such a representative anywhere.

124 That said suit and proceedings against said Albert Staehle because as to him abated by his death, and that your oratrix desires to have it and such proceedings revived against his said widow and children and heirs at law and restored to the condition in which they were before his death.

And therefore prays that they may be made co-defendants to this bill, and that summons may be issued against them to revive said suit and proceedings, and that each of them may be required to appear without oath which is waived on said original bill, and this bill of revivor truly, directly, fully and perfectly to the best of his or her remembrance, information and belief, and that such suit and proceedings may be revived and restored to the condition in which they were before the death of such decedent or that they may show cause to the contrary and to abide such order or decree in the premises as the court may make upon such original bill and this bill of revivor.

MADELAINE ROTH,
By C. M. HARRIS, *her Sol'r.*

C. M. HARRIS, *Sol'r for Compl't.*

139 STATE OF ILLINOIS, *Cook County:*

Superior court of Cook county. In Chancery.

The joint and separate answers of Mathilde Staehle, widow of Albert Staehle, deceased, also Albert Staehle, son of said deceased, and Emma Staehle, daughter of said deceased, to the bill and bill of revivor filed in said cause.

These defendants, now and at all times saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and uncertainties in said bill and bill of revivor contained, for answer thereunto say.

That they admit the death of said Albert Staehle, as alleged, and that he left him surving this defendant, Mathilde, his widow, and these defendants, Albert Staehle and Emma Staehle, and
140 the other persons therein mentioned as his heirs at law, as alleged in said bill of revivor, and that he died intestate.

And further answering, they now adopt the answer heretofore filed by said Amalie Staehl Roth and Albert Staehle, now deceased, to the bill of complaint filed herein, which said answer was filed in said court on October 9, 1878, and insist upon the same as their

answer, the same as if all the allegations therein contained were here again repeated.

That the rights of said Albert Staehle, now deceased, have by virtue of his death descended to and become vested in his said widow and children.

And these defendants deny all and all manner of unlawful combinations and confederacy, wherewith they are by the said bill and bill of revivor charged without this, that there is any other matter, cause or thing in said bills contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided,
141 or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

MATHILDE STAEHLE,
EMMA STAEHLE,
ALBERT STAEHLE,
By ROSENTHAL AND PENCE,
Their Solicitors.

189 Your oratrix, for amendment to her said bill, on leave of court therefor, reversing exceptions to the insufficiency and impertinency of the answer of said so-called Amalie Staehle Roth and Albert Staehle and of said John Gunzenhauser to said bill, and to that of said Amalie filed to the bill of revivor herein, which was filed herein after the death of said Albert, specially those taken to the answer first aforesaid, and filed herein on the 2nd day of
190 September, A. D. 1879, and by agreement of parties filed herein on the 18th day February, A. D. 1880, which provide for extending them to all of such answers and such right to except, though such exceptions so filed are not to be disposed of before the hearing of said cause respectfully represents.

That what is in said answer called an agreement, release and assignment of date on or about the 6th day of September, A. D. 1873, is, as she believes, the writing stated in her bill to have been executed by her on or about that day, of the contents of which she knows no more than is in said bill stated.

That she was not until after the filing of said answers informed, either:

That by reason of her coverture she was incapable of making any such agreement, as such so-called agreement, release, assignment or writing is claimed in the answer first aforesaid to be, or of, in any way, transmitting or conveying or of binding herself to any real estate situate in said state or any interest therein, even an inchoate one,

or of releasing any such title or interest, save by deed of her husband and herself to a third person, as provided for by the statutes of said state, which she represents and charges to be so, and that such so-called agreement, release, assignment or writing is—void
191 as against her on account of either thereof; or that such so-called instrument is and was required to be executed and acknowledged as jointures or instruments for the conveyance of real estate, or for the release of title thereto, or of any interest therein, were, by the statute of said state, required to be when it purports to have been executed and made, which she represents to be true, and that it was not, and charges that it, on such account, is void as against her.

That neither while said bill was being made nor until sometime after the filing of said answers did it occur to her.

That on or about the third day of October, A. D. 1876, and before she left Schorndorf, in said bill named, on her return to her home, in said bill named, said so-called Amalie Staehle Roth said to her that, as she had business at Stuttgart, in said bill named, and that the paper which she had signed on the 26th of September, before then, in the manner in said bill stated, would have to be signed by her before the consul at said Stuttgart, she would go with her as far as that place, and that she did; and that, on their arrival there, on the day on which they started, they went to a place
192 called the consul's office, where she handed to a man unknown to your oratrix a paper, when he took it and held it toward your oratrix, and asked her if it was right, or something to that effect, and that she replied, believing it to be said paper, that it was, when he asked her to sign it, which she did, when he took it into another room, and in a very few minutes returned and handed it to said Amalie.

That although she had never, to her knowledge, such paper, only for a moment, to sign it, as aforesaid, if not the paper first aforesaid, and never attempted to read it, asked that it be read or explained to her, or in any way attempted to ascertain what it was or what it contained, believing it to be what she has stated she supposed it was, and not suspecting imposition; and although she has stated in said bill that she never signed the pretended deed therein described, purporting to have been made by her to said Albert Staehle, and that it was a forgery, which she then and until since such occurrences believed, she now believes that said so-called Amalie Staehle Roth, for the purpose of inducing her to
193 make such so-called deed, under the impression that she was but signing before the consul the paper first aforesaid, and thereby to deprive her fraudulently of her interest in the real estate in said so-called deed described, and in the rents and profits thereof, did willfully, falsely and deceitfully pretend, represent, act and do as hereinbefore charged that she did, and thereby induce her to make such so-called deed, as and in the manner, under the circumstances and the impression aforesaid.

Wherefore she withdraws such charges that she did not execute said so-called deed, and that it is a forgery, and substitutes therefor what is herein stated relative thereto, and to such so-called agreement and deeds.

That she now believes and expressly charges that said Amalie Staehle Roth, so-called, willfully, falsely, deceitfully and fraudulently so pretended, represented, acted and did as aforesaid for the fraudulent purpose aforesaid, and that she thereby induced her to believe that said so-called deed was the paper aforesaid, and it was necessary that she should sign it before the consul and to induce her to sign it under such impression, and that but for which she
194 would not have signed it, and that it is on such account not really her act and deed, and is void.

That the so-called deed and acknowledgment thereof was made of a blank printed in English by the Chicago Legal News Company in the city of Chicago, in said state, and that the blanks therein, including even that for the date of execution, and for such acknowledgment, were filled in that language in said city of Chicago, as she is informed and believes.

That she never understood the English language and could not have, nor can read said so-called deed, if in such language. That if such so-called deed was signed by her, and she believes and admits that it was—that it was unconsciously signed by her, it seems necessary to charge that it was so signed without any consideration, or that it was not made to more fully carry out the intention of said so-called agreement of 26th of September, A. D. 1876, as stated in the answer first aforesaid, yet she expressly charges that it was signed without any consideration or any such intention whatever,
195 and without intending to have signed it.

That it is pretended in the answer first aforesaid that by reason of said decedents having been as therein claimed and pretended, a citizen of the Kingdom of Wurtemburg at the time of what is therein stated to be a pretended marriage between said *decedent* and your oratrix, and continuing to be a subject and citizen thereof until his death, as therein pretended. Of his having been domiciled at said Schorndorf from A. D. 1856 until his death, as therein pretended.

Of a so called law of said Kingdom as therein pretended, and stated to be to the effect that no marriage of any of its citizens consummated without the consent of the government thereof, should be valid and binding, but that all such marriages of any of its citizens were null and void, and would be considered as if such pretended marriage had never taken place. Of a so called pretended decree of the Royal Matrimonial Court of Ellwangen, in said Kingdom, of nullification of such marriage, on the basis to the effect that such marriage was without permission from such government
196 as therein stated. Of its having been celebrated after the making of the so called instrument of writing aforesaid purporting

to be of date the 9th day of September, A. D. 1873, and because, as stated therein, that on the 27th day of November, A. D. 1873, each, said decedent and said Amalie, being unmarried, did then marry; they became husband and wife, and that by his death she became his widow.

Admitting such statements of such pretended law, decree and marriage, which your oratrix denies, they did not thereby become husband and wife, because of either of the following reasons:

1. That it does not appear what said pretended law is, but only that it is to the effect hereinbefore stated.

2. That by its terms, it is confined to marriages celebrated in such kingdom, and would have no extra territorial force if it were not.

3. That it does not appear that any suit or proceedings of any kind was ever pending in such court between her said husband and herself, or in which she was a party, or as to such marriage, or that it had jurisdiction thereof, or that there was any pleading, issue, evidence, hearing, determination or adjudication of or as to such marriage in any court.

197 Or that such marriage was ever declared null or void at any term of any court, or that any decree was ever entered of record or appears from any record.

Because such statements of such pretended law and decree are but statements of conclusions and not of fact, and if correct, show that the pretended decree is but an edict.

4. That each such pretended law, decree and marriage is against the public policy of the State of Illinois, the interest and well being of its citizens and suitors in its court, morality and decency, and that neither would be recognized by the laws of any christian people or of nations, on account of either of such pretended marriage is void.

5. That said *decedent* and your oratrix were married in said city while both of them were domiciled in it, and on the 21st day of July, A. D. 1855, in accoreance with the then laws of said State, without any intention of ever removing therefrom, although about a year thereafter they did remove therefrom on account of the death of a child of their marriage only, that the validity of such marriage is governed by such laws, that said decedent—said John George Roth, deceased, was, at and before his pretended marriage

198 with said Amalie, the husband of your oratrix, wherefore such pretended marriage was polygamous and void, and that the descent and transmission of the subject matter of this suit and of every interest therein, is governed by the laws of said state only. Your oratrix further represents that she has been informed and believes that before her marriage with said decedent he was naturalized in the State of Wisconsin, or said city, and that if in the latter place the records thereof were burned in said city on or about the 9th day of October, A. D. 1871, as she is informed and believes,

which however she believes immaterial in this case, as she does, is the fact that they were domiciled in said city of Chicago, when so married, and then intended to continue such domicile in it.

That said *decedent*, in or about the year 1838, removed to the State of Wisconsin, and from thence to said city of Chicago, she thinks within three years thereafter, where he remained domiciled until sometime in A. D. 1856.

That in A. D. 1843, before her marriage with him, he married Salomie Letz, then of said city of Chicago, in said city of Chi-
199 cago, who died some years thereafter, and before his marriage with her.

That from profits from business done by her said husband in said city of Chicago, he acquired all the real estate which is the subject matter of this suit, and all that he had when he removed from it, and that by the constitution of said state in force when he removed to said city of Chicago, he became a voter in it six months after so removing to it, and was one to the time of his removing from it as aforesaid, all which, however, she believes immaterial in this case.

That the pretended post nuptial settlement in such answer alleged to have been executed between her said husband and said Amalie, on or about the 28th day of March, A. D. 1874, was not one, because a marriage relation never existed between them, nor any but that of bigamist and mistress, which did at that time and had from years before then until his death.

That it is against the public policy of said state, the interest and well being of its citizens and suitors in its courts, morality, decency, and the rights of others, including those of said heirs in said bill named and herself, and is not only, on account of the reasons
200 aforesaid stated, showing that it is not a post-nuptial settlement but of either thereof void, but is also because of either of the following reasons:

1. That to procure the making thereof or some like one, or pecuniary or other favor from your oratrix' said husband, said Amalie submitted to the intercourse with him charged in said bill, and so gratified his carnal propensities as to have instigated him to have mistreated your oratrix and to have thereby caused the separation therein stated.

2. That but for the continued enjoyment of an illicit intercourse with her your oratrix' said husband would not have so treated her, and there would have been no separation between them.

3. Because, to further such purpose, said Amalie induced your oratrix' said husband to obtain what is called in such answer a decree.

4. That but for such desire of such intercourse he would not have.

5. That the more effectually to effect such purpose she constrained your oratrix' said husband to enter into what in such answer is called a marriage with her, which was polygamous, and she so charges.

201 6. That but for such desire for the continuance of such intercourse with her he would not have entered into such relation with her.

7. And because her said husband was constrained to submit to all such dictation and restraint of said Amalie, and so to consent and act by a desire to continue the disgraceful and demoralizing intimacy at such times existing between him and said Amalie.

Your oratrix further represents that such pretended post-nuptial settlement was made without any consideration and for an infamous purpose, and that it is void on account of either thereof.

That it is uncertain and vague in not describing the property or any of it, or in any way designating it or any of it, or stating just where it or any of it is located or its value, or the value of any of it, or anything from which the kind, value or location of the property or any thereof can be determined, and in not giving the names, citizenship or residence of any of the brothers or sisters, and in not stating when payment was to be made, to them, and for other reasons appearing in such answer, and of the want of any averments as to such defects, it is void for uncertainty.

202 That from the circumstances and nature of the transaction, it is apparent and a presumption arises that it was obtained by undue influence, fraud, imposition, or other unlawful device practiced by said Amalie on your oratrix' said husband therefor, and your oratrix represents and charges that it was, and that it was not freely and deliberately made, and is not fair and proper, and that it is unjust and unreasonable, to rebut which nothing appears in said answer; on account of which it is invalid.

That it purports to be of most of all her said husband had, and is unreasonable, and on such account invalid.

That it does not appear how nor in what way it was made, nor that it was ever delivered, and that it is invalid on such account.

That it is not executed and acknowledged as by the laws of said state instruments, or writings of, or relating to the sale, conveyance or other disposition of real estate situate in said state, or any interest therein, whereby the rights of any person may be affected in law or equity, were required to be when it purports to have been made, and would be on such account alone invalid, even if otherwise valid, which it is not.

203 That it was made without any consideration therefor, is executory, and was not to have by its terms taken effect in favor of said Amalie unless she survived your oratrix' said husband, and therefore would not have, if valid, which it is not, have deprived him of the title and dominion of the real estate therein described, nor of any thereof, during his life, and would have been revoked by his death, and if it had not been so revoked such real estate would have by descent devolved upon said heirs of her said husband and herself, in the manner and portions herein stated.

That it purports to dispose of property after the death of the

owner thereof, and in its nature is and really is testamentary and could not have if valid, which it is and was not, taken effect on the subject matter of said suit, nor any part thereof because not executed and witnessed as wills by the laws of said state were required to be when it purports to have been made.

That were it valid, and it is not, and had it been executed and witnessed as required as aforesaid, and it was not, it would not
204 effect such subject matter because made in a foreign country.

That were it valid and had it been so executed and witnessed, said Amalie and Albert are precluded from claiming the subject matter of said suit or any part thereof or any interest therein, thereunder, because of the statements on page three of their answer herein that your oratrix did not die owner of the real estate described in said bill although he did die owner thereof, and your oratrix expressly states that he did.

That said Amalie and Albert by their admission on page one of their answer herein, that your oratrix' said husband died on the 12th day of July, A. D. 1876, and the one on page three thereof, that he was owner of all the real estate described in said bill up to that day, and for several years had been, are estopped from claiming title to it or any part of it, under said so called post-nuptial settlement, previous to that day, not admitting that they or either of them could have, if not so estopped, either before or since then, which she expressly denies.

That even if made it would not be cognizable in a court of equity nor could specific performance thereof be enforced, on account of either want of consideration or revocation aforesaid or other
205 matters herein stated to show that it is void; that it is voidable; that it is invalid and of other matters herein and in said bill stated.

That even if made it is void because against public policy of the state of Illinois, the interest and well being of the people thereof and suitors in its courts, morality, decency and the rights of others.

That said John George Roth, Gottlieb Roth and Jacob Roth, reside in the county aforesaid and have ever since long before A. D. 1873, as has said Christian Roth, unless he has a part of such time resided in the states of Kansas and of Wisconsin, as she so informed and believes.

That it is alleged in such answer:

"That afterwards, and on the 12th day of July, A. D. 1876, the said John George Roth, for a valuable consideration then agreed to be paid, transferred unto this defendant, Albert Staehle, all of said real estate in said bill described, by an instrument duly executed, which was written and executed in the German language, which is ready to be produced, as the court may direct."

"That said instrument is not under seal, but the same is sufficient in a court of equity, for the purpose aforesaid, and sufficient for the transfer to the equitable estate of said premises."

206 "That said transfer was subject to the rights of said Amalie under said post-nuptial agreement."

Your oratrix further represents that she does not know whether her said husband made any such agreement, but does not believe that he ever did, and therefore expressly denies that he ever did.

That it would be invalid if signed by him, because it does not appear to have been executed and acknowledged as by the laws of said state, instrument or writings of, or relating to the sale, conveyance or other disposition of real estate situate in said state, or of any interest whereby the rights of any person may be affected in law or equity were required to be when it purports to have been made, and that it would be if so executed and acknowledged, if testamentary, because it does not appear to have been executed and witnessed as wills by the laws of such state were then required to have been.

That if ever made it was not under seal; is on such account void for the purpose claimed in the answer first aforesaid.

That it is invalid, if ever made, because it does not appear that a valuable consideration was to be paid for the making thereof, or that any or what consideration was to be paid, although it is
207 that a valuable one was to be, and also, because it is not stated when any consideration was to have been paid, nor whether with interest therein, nor whether payment at maturity is of the essence of the contract, or whether for non-payment thereat, a forfeiture of such pretended contract could be taken, or anything relative thereto.

That if ever made, it is void for vagueness and uncertainty.

That in such answer it is stated that it was executed on the day of *decedent's* death, but is not whether it was before or after his death, or if before that he was not incapacitated to properly make it, nor that it is witnessed or was made or executed in the presence of any one, or that he understood its contents, or any thereof, or was informed thereof, or of any thereof, or that he executed it freely and deliberately, and that the transaction was fair and proper, or that he had any advice thereasto, and having been made, if made as she is informed and believes, without any consideration therefor to the brother of said *decedent's* mistress, and she charges that if made it was made to him without any consideration, and that said Albert and Amalie were fully legally advised in the matter, and that said *decedent* was not at all in any way,
208 and that no provision was made in it for the payment of eighty thousand florins to the brothers and sisters of said *decedent* by said Amalie, although it is admitted in said answer that such an one was made in said pretended post-nuptial agreement, yet no provision of any kind is in such pretended writing, made for the benefit of them, or of either or any of them, nor for the renunciation of said pretended agreement.

Not admitting that such so-called post-nuptial agreement, which

is void, is valid, it is on such account voidable at the election of your oratrix and said heirs, or either or any of them, and she elects to have it declared null and void.

That it is stated in such answer that it was made subject to the rights of said Amalie under said pretended post-nuptial agreement, as it also is that it is provided in it that if said Amalie should live longer than said *decedent* that she should have all of said *decedent's* property of every description, and should thereupon pay to his brothers and sisters eighty thousand florins, and that the rest and residue of his estate should fall to her absolutely, wherever
209 the same might be situated, and said *decedent* having died on the 12th day of July, A. D, 1876, and your oratrix avers that he did, it never became operative, and never would have if valid, which it was not.

Not admitting that such so-called post-nuptial agreement, which is void, can effect anything.

That it is not stated in such answer that said decedent ever executed it. Your oratrix believes, represents and charges that if said *decedent* ever signed it he was constrained to against his will by false representations, imposition, undue influence, resistless importunities, fraud, imposition, deception, force, violence, threats thereof, fear, duress, restraint, or some unlawful means or devices unknown to your oratrix, imposed, used, exercised or practiced upon him by respondents in such answer, or one of them acting in concert therefor, or for peace of mind, or that he did it with the understanding at and before the time of doing it between said Albert and Amalie and himself, that it was not to be obligatory on either of them, and that the title to such property and everything pertaining thereto
210 was to remain in him, said *decedent*, as if it had never been made, or that it was to be testamentary only, or that it was obtained by such means or some of them, and was to have no operation until after his death, and upon and in connection with said pretended post-nuptial contract for the sole benefit of said Amalie in securing to her after his death the property rights and *credits* in it attempted to be described, clear of the incumbrance alleged to haye been therein, created upon it in favor of the brothers and sisters of said *decedent* in case said Amalie should survive him, and, if so, would be against public policy, on account of such purpose, operation and connection, and on such account alone void, as it would be if it arose out of it was made in aid of or was in any way connected with it; or that it was made for some other fraudulent purpose.

Or when said decedent was dying, or when as much or as wholly incapaciated from the near approach of death, as if he had been, or at least after the cause of his death, which is unknown to her, had rendered him incapable of comprehending its subject matter or anything.

211 Your oratrix represents that she has been informed and believes that the signature to such pretended writing has no

resemblance to that of her deceased husband or of any other person.

That it was so signed, if ever, by said decedent, is apparent and presumed even from the admissions, averments, inconsistencies, contradictions, improbabilities and suspicions circumstances appearing in such answer, and from the transaction itself and attending circumstances as therein appearing, and is on such account presumed to be void.

That even if made by said decedent, it was without consideration, as she believes, and was therefore revoked by his death.

That even if made by said decedent for a like reason, all the real estate in said bill described descended to said heirs and your oratrix in the proportion herein stated.

That even if made it would not be cognizable in a court of
212 equity, nor could specific performance thereof be enforced, for like reasons, and others herein and in said bill stated to show that it is void, that it is voidable, that it is invalid, and that it is ineffectual, or of other matters herein and in said bill stated.

That even if made it is void, because against the public policy of the State of Illinois and the laws thereof, the interests and well being of its inhabitants and suitors in its courts, morality, decency and the rights of others, including your oratrix and said heirs, and for other matters herein and in said bill stated.

That it was never delivered, and is therefore invalid if ever made.

Your oratrix further represents, that she has no personal knowledge of the so called acceptance and ratification and release of rights to make exceptions in said answer stated to have been made by said Amalie, on the 27th day of July, A. D. 1876, of and as to said pretended writing, purporting to have been made on the 12th day of that month; and further represents and charges that said
Amalie had no rights to release, and that said pretended
213 instrument of said 12th day of July, if ever made, being void, and for reasons hereinbefore stated was not, is not, nor ever could have been the subject of ratification, or of any release of any rights, and that were it otherwise to regard such acts by the mistress of the husband of another, relative to the disposition of his property, would be against public policy of said state, and morality of your oratrix husband, said decedent, and were it otherwise and were said so called instruments otherwise.

It does not appear that the former was executed and acknowledged as by the laws of said state instruments or writings of or relating to the sale, conveyance or other disposition of real estate situate in said state or any interest whereby the rights of any person may be affected in law or equity were required to be when it purports to have been made, and that it would be on such account alone invalid. That such claim of ratification precludes said defendants from claiming that the so-called instrument so claimed to have been

ratified could fail to have effect until so ratified, and after the
214 death of her said husband, or that is not testamentary, especially as it is in another place on their said answers stated that by reason thereof and of other reasons stated. Your oratrix has no interest in the premises in said bill described, not one willing that it was ever made or is what or could be the subject of ratification, but denying it. That she believes that if the last referred to so-called instrument was ever executed by said *decedent*, it was by the preconcerted procurement of said Albert and Amalie, and for the purpose of more effectually securing to her after the death of said *deceaent*, all of the property, rights and credits described in said pretended post-nuptial agreement, and that such attempt to accept, release and confirm was made for a like purpose previously desired and agreed upon and to by both of them, and that such procuration and attempt for the purpose by both of them of fraudulently depriving said heirs and your oratrix of the subject matter of said bill. Although it may have been agreed as aforesaid that it was not to be obligatory.

That the statement in such answer that such pretended writing is
215 a contract of sale or deed, is but one of a conclusion of law, and that from the statement in such answer, that it was made upon a consideration to be paid, it is apparent that it if valid, which is denied, would not be even sufficient to transfer, and equitable one as it is in such answer alleged to be, and your oratrix represents and charges, that it would not be.

That it is stated in such answer that on the eighth (8th) day of September, A. D. 1877, said Amalie executed and delivered to her said brother, for a valuable consideration, a deed of conveyance of all her rights, title and interest in the premises described in said bill, and that it was duly executed and acknowledged.

Your oratrix further represents that she knows nothing of such alleged conveyance, purporting to have been made in consideration of one hundred thousand dollars, as appears from the record referred to in such answer, nor of the alleged execution, deliver or acknowledgment thereof, but that he does know that said Amalie never had any interest whatever in the real estate so stated to be described therein, nor in any part thereof, and so charges, and further represents that such statement estops her from claiming any, and would if she had any, and so charges.

That she knows not whether any of the deeds in such
216 answer alleged to have been made by said heirs of her said husband, in which each having a husband or wife was joined by him or her, were executed and acknowledged as at the time alleged to have been made, were required to be by the laws of said state, and therefore requires proof thereof.

That she did not, as stated in said answer, after the death of her said husband, nor at any time, with full understanding of all the facts and of all of her pretended rights or claims in and to his estate,

and after full knowledge of all of his estate, at or before his decease, make a further demand for a portion of his estate, but that she had no other knowledge of such facts than are stated in her said bill, that her rights are not pretended, but real, and that she had no other knowledge of them than as stated in said bill, and that she did not make any demand for any portion of his estate, unless the statements in her said bill amounts to one, which she denies, and that she did not go to said Schorndorf therefor, or for any other purpose than is stated in her said bill.

That before she went to said Schorndorf, at the time in her said bill stated, means were being devised by said Amalie and her
217 said brother, and others acting in concert with them, or by others acting for them, or one of them, to her unknown, by the approbation of them or one of them, for the purpose of fraudulently depriving your oratrix of her interest in said bill stated, and that if she had not been in said Schorndorf at such time, that said Amalie and her said brother, or some one for them, would, as she believes, have, within a few days thereafter, if not sooner, endeavored to have consummated such purpose, wherever they could have found her, as she has since the filing of such answers been informed and believes.

That such device was made by and under full counsel, independent and also legal, as were all of the pretended transactions, agreements and writings in said answer stated, on the part of the alleged parties thereto other than said heirs and your oratrix, and does not believe that any of such heirs had, and that she had more of either kind as to any thereof. That said Amalie and your oratrix did not enter into and sign said pretended agreement of said 26th of September in order that she might be relieved from all demands of your oratrix, and for the purpose of finally settling, compromising and compounding all claims, if any, that your oratrix might have,
218 as stated in such answer, but to defraud your oratrix as is herein and in said bill stated.

That no demand was made of her by your oratrix, unless the statement in her said bill amounts to one, which she denies.

That she did not sign anything but only a blank paper, over which she supposes that said pretended agreement was written.

That said Amalie always denied that your oratrix had any demands, and that it was stated to her that her signature was desired for form only, that she had no interest in the estate of her said husband, and that your oratrix did not know whether she had; that she believed the amount promised her by said Amalie was a gratuity given because her husband had not given her enough, as was stated by her, and that a conveyance from her would not transmit any title, and because of other matters stated in her said bill.

That your oratrix knows nothing of the contents of said pretended agreement of said 26th September, and states that she is not bound by them nor any thereof because of reasons in said bill, and herein stated, to show that it is in no wise obligatory upon her.

That though it may have been written over her name, and
219 she supposes that it was, she did not write her name with a knowledge and comprehension of the facts in the case on her part, or with any other knowledge or information of such facts than is stated in her said bill, and that she never did have any other of either until as and at the time stated in said bill.

Your oratrix states and charges that the statement in said answer that she had full knowledge of all the transactions hereinbefore set out (in said answer before set out) and acted upon full information, and that said agreement of September 26th, 1876, and said deed last mentioned (the pretended deed of your oratrix to said Staehle, brother of said Amalie) were executed by said Madelaine Roth by way of settlement and compromise of a disputed claim upon her part, to an interest in the estate of said John George Roth, deceased, and that she fully accepted said settlement and executed said deed in full satisfaction of all such pretended claims upon her part, is wholly untrue, except that she believes that on or about the said third day of October, she under the circumstances hereinbefore stated, signed said pretended deed, but not when it purports
220 to have been signed, as she has since the filing of said answers been informed that the record thereof, referred to in said answer, shows that it is dated on the 11th day of September, A. D. 1876, which she believes, as she does, that it was dated in said city of Chicago, and so charges.

Your oratrix denies that she was fully informed of all the circumstances regarding the estate and property of her said husband, and that she had advice with reference to her interest in said estate, as in said bill stated, and says that it is wholly untrue, as it is intended that the latter should be understood, which is, that she had independent and honest advice, as she had no such advice, any other save against her interest, and that she had no other such information than is stated in said bill.

That the statement, "And these defendants allege that on account of the pretences and claims of said Madelaine to have an interest in the estate of said John George Roth, and in order to prevent trouble and litigation,

"She, the said Amalie did offer to pay the said Madelaine the sum of 10,000 marks, by way of settlement of all such pretended claims, and that she did it for the purpose of buying her peace, and for no other consideration, and that such transaction was for
221 the benefit of said Madelaine," made in said answer, is wholly untrue.

Your oratrix states that the allegation in said answer, that "all of such instruments were duly executed and acknowledged in the presence of legal officers, the contents having been fully explained and made known to her, the said Madelaine Roth, by such legally constituted officers," is wholly untrue. As is the one that the sole purpose of her said visit to said Schorndorf was to lay

claim to some portion of the estate of her said husband, and to compel said respondents to buy their peace of her, and that it resulted as hereinbefore set out, and was made for the purpose of securing such a result, except so much of it as relates to how it resulted, and that she had no other purpose for the making thereof than she has in her said bill stated.

That the allegation, made in said answer that said Madelaine called upon said Mueller, and advised with him in reference to her rights in said estate, and that he was her confidential adviser in the matter, and was in no sense the adviser of said Amalie is in the sense in which it is intended to be understood, which is that such call was made to advise with him, wholly untrue, and that she called upon him for the reason only stated in said bill, and that he
222 was not her confidential adviser, but that he betrayed and deceived her, and advised her in the interest of said Amalie, and conspired with and aided her in such attempt to defraud your oratrix, as she has since the consummation of the transaction become satisfied, and so charges.

Your oratrix states that she is and has ever since the death of her said husband been an expectant of what is claimed to be stated in such pretended agreement of said 26th of September, and that the pretended consideration alleged to be therein stated for the alleged making thereof, is not one-fortieth part of the value of her said interest claimed to have been conveyed there.

On account of which and facts herein and in said bill stated, such pretended agreement is voidable as against her.

That she does not now believe that said Amalie ever intended to pay her any more of such pretented consideration than is stated in said bill that she did, if by any fraudulent deception, device, imposition or means she could avoid it and obtain title to her said interest in her said husband's estate.

That each of the persons who it is in such answer stated
223 made such pretended deeds were expectant heirs or husband or wife of such an heir; that it is stated in such answer that each of them were made to convey the interest of the grantor or grantors thereof in the real estate described in said bill, which is the expectancy of each thereof in said estate of her said husband, as his heir and as heir thereof, and that such pretended deeds purport to have been made soon after his death, and that each of said pretended deeds were made for a pretended consideration, which is only about one-fourth of the value of the property claimed to have been conveyed thereby, on account of which and other matters herein and in said bill stated, each of them are voidable as against the alleged grantors, and that each of them are void, because that the pretended consideration of each of them are unlawful, and renders each of them void, as will hereinafter appear.

That ever since years before the time that it is in such answer alleged that such alleged conveyances were made, said Jacob Roth,

John George Roth and Gottleib Roth have been insolvent, and very much in need of means for their support, and without those for a comfortable one, which has been during such time derived
224 from wages of their daily labor, which, during all such time, was low, and that during much thereof neither of them could obtain any employment, and that during all that time each said Gottleib and John George had a family, as she is informed and believes.

And at the time neither said Gottleib nor John George knew much of the English language, neither of whom could read in it, and that said Jacob could only imperfectly with difficulty read writing in that language.

That the other said heirs of her said husband, save said Christian, of whom she has no information, except as to his residence, reside in Bentelsbach, in said Kingdom, and ever have, and that neither of them have ever been in America, or ever could speak or write the English language, or ever understood it, although the alleged deeds aforesaid, purporting to have been signed by them and the other said heirs, are in the English language, and it does not appear that the contents of either of them ever were made known to or were known to either of said heirs, and that such heirs living in said kingdom are, and ever since years before the time last
225 aforesaid, have been very poor, and dependent on their manual labor for their support, which was a scanty one, as she is informed and believes.

That neither of such heirs, with such exception, have any business capacity more than pertains to his or her mode of living, as aforesaid, and not sufficient for the protection of their rights in disposing of his or her said interest in said estate, and that the circumstances attending what is in such answer first aforesaid claimed to be conveyances thereof are of themselves evidence thereof, and that they were, as charged, fraudulently obtained.

That each of said heirs are impulsive, unreflective, improvident, inconsiderate and credulous and confiding, and very susceptible of imposition, and ever have been and ever were until long since the pretended making of such conveyances, ignorant of their rights in said estate and of the law thereof and of the law governing such cases, as she has been informed and believes.

That in the fall of A. D. 1876 said Staehle, in said city of Chicago, informed said Jacob Gottleib and John George Roth
226 that her said husband had died on the 12th day of July last before then; that he had bought of him the real estate described in said bill, but that he would pay each of them twenty-nine hundred dollars, the amounts provided for them in said so-called post-nuptial contract when they signed deeds to him, and that if they did not sign them in forty-five days that they never would get anything, and that he had come to said city of Chicago from Germany for their good, not his, as she is informed and believes; and she believes that he, at and before the alleged making of said other pre-

tended conveyances to him by said other heirs, made similar representations to them, omitting that he had come to said city of Chicago.

Your oratrix represents and charges that all of such representations, except as to what is contained in said so-called post-nuptial agreement, of which she knows nothing, are false and were known to be by said Staehle when made, and were made for the purpose of fraudulently depriving said heirs of their said interest in said real estate.

That she believes that said heirs believed them to be true, and in doing what is alleged in said answer first aforesaid to be the
227 making of conveyance by them to him, relied upon and were influenced by them, and that by reason thereof and on account of the need, condition, ignorance, nature, peculiarities and weakness aforesaid of each of them, and of their being as aforesaid, they did whatever they did do, thereasto, and that otherwise neither of them would have.

That said pretended consideration, nor either thereof, have ever been paid, and that neither of such heirs have any evidence that either of such so-called considerations were ever to be paid than *parol* testimony, as she is informed and believes, and that at and long before the time of the alleged making of either thereof, said Staehle was insolvent, and as she believes never intended to pay either thereof.

That each of so-called conveyances are against the public policy of said state and the laws thereof, the interest and well being of its inhabitants and suitors in its courts, morality, decency and the rights of others, including your oratrix and said heirs at law, if ever made, because arising from or out of, or was and is, in some way, connected with, or made in aid of, said so-called post-nuptial agreement, and she charges that they, if ever made, were so made,
228 and also for other matters herein and in said bill stated, that each of them are also void.

That it is stated in said answer, first aforesaid, that by reason of such so-called decree of nullity, agreement of the 9th day of September, A. D. 1873, and payment of eight thousand dollars thereupon, pretended marriage of her said husband and said Amalie said so-called post-nuptial agreement, said pretended agreement purporting to have been made on the 12th day of July, A. D. 1876, as stated in such answer, and the confirmation thereof by said Amalie, and of the various so-called deeds of conveyance before them set out in such answer, and for other reasons, your oratrix has no interest whatever in or to any of the premises in said bill described.

That such matters and things, if valid, operate affirmatively, yet no such operation is claimed for them, not even that any person was ever divested of anything thereby, evidently as appears therefrom as well as from the whole of said answer, on account of its compli-

cations, as well as those of the whole of said answer resulting from a mistaken and excessive use of the means possessed by said so called grantees of obtaining from such alleged to be grantors
229 the execution of any instrument without giving any compensation therefor, though fraudulent as against the rights of each of them, of which they were ignorant until after the times of the alleged dates of such so called instruments being such that said respondents feared the consequences of divulging their intended defense or that of either of them, or even of stating that by virtue of such conglomeration, your oratrix or said heirs at law, or either or any of them, were ever divested of anything although it embraces the subject matter of their said answer, and although it is apparent from it as well as from the whole of said answer that it was made that the one of them whom they might hereafter determine could most probably consummate the fraud herein and in said bill charged against them might claim that by such conglomeration your oratrix and said heirs become divested, and that the one of them so determined upon became invested with the subject matter of said suit, which is not only a concealment of the real purpose of their answer, but one from which a presumption of the truth of the allega-
230 tions of said bill arises against them, and your oratrix states and charges that such presumption cannot be rebutted as no evidence is admissible on an answer which betrays a fear of respondents to disclose the real purpose for which it or the averments in it are made, and that such presumption is therefore as conclusive against said respondents, as would have been an admission of all the statements and charges in said bill, and denies that by reason of such pretended matters or any thereof, or anything in said answers said heirs or either of them have been divested of anything in her said bill claimed.

That the statement in said bill of the portions of said real estate and its rents and profits, to which each of the following named persons in said bill, stated to be heirs at law of her said husband, deceased, is entitled, is incorrect, but was unintentionally so made, and which your oratrix corrects by stating instead thereof, that each said Jacob Gottlieb and John George Roth and said Frederica Ehman, in said bill stated to be children of said Gottleib Roth, deceased, therein named, are each owners of and entitled to as such heirs, one twenty-fourth of said real estate, and one thirty-
231 sixth of its rents and profits, that each said Johannes Roth, Christian Roth, and Frederica Henbach, in said bill stated to be sons and granddaughters of Johannes Roth, deceased, in said bill, by mistake stated to be John Roth, are owners of and entitled to one eighteenth of said real estate, and to one twenty-seventh of its rents and profits as such heirs, and that each said Jacob Roth and William Roth and Frederica Schweitcer, in said bill stated to be children of Jacob Roth, deceased, therein named, are each owners of and entitled to one eighteenth of such real estate, and to one twenty-seventh of its rents and profits as such heirs.

That the fact that your oratrix and her solicitor in this case cannot speak the same language, and that they have had a number of interpreters between them, some of whom were incompetent, has conduced to the necessity of the corrections herein made, as she believes.

That said Amalie and Albert, nor either of them, have ever expended anything on said real estate, made any improvements threreon, nor in any way enhanced the value or changed the
232 condition thereof, and that since the death of her said husband no other person than said heirs and himself have become pecuniarily interested in said real estate, or any part thereof.

Your oratrix prays that each said so-called decree of nullity and pretended marriage be declared and held to be void, and for naught, and be so regarded, and that the relation between her said husband, deceased, and herself be regarded as if no such so-called decree and pretended marriage had ever been made, and that each said pretended deed purporting to have been made by her to said respondent, Albert Staehle, on the 11th day September, A. D. 1876, said pretended post nuptial agreement, and said pretended agreement purporting to have been made on the 12th day of July, A. D. 1876, be declared and held to be void, of no effect, and for naught, and set aside and held as if never made.

That said Mathilda Staehle, wife of said Albert Staehle, deceased, Emma Staehle, Julia Staehle, Mathilda Staehle, Eugene Staehle, and Alfred Staehle, his children and heirs at law, and said Amalie be required to make and deliver to said heirs (and your oratrix) at law of her said deceased husband, their quit-claim deed of all their pretended right of dower and interest in and to said real estate with or without conditions or terms, as may be equitable, and that said defendants be required to answer this amended bill without oath, which is expressly waived, and that your oratrix may have such other and further relief as equity requires, and she also prays as in her said bill she has.

MADALINE ROTH.
By C. M. HARRIS,
Her Solicitor.

C. M. HARRIS,
Sol. for Complt.

236 The joint and separate answers of Amalie Staehle Roth, Mathilda Staehle, widow of Albert Staehle, deceased, Albert Staehle, son Albert Staehle, deceased, and Emma Staehle, to the bill of complaint filed herein by said Madelaine Roth, as amended.

237 These defendants, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill as amended contained, for answer thereunto, say:

That they admit that said John George Roth departed this life on the 12th day of July, 1876, intestate, at Schorndorf, in the King-

dom of Wurtemburg, leaving him surviving no child or any descendant of a deceased child, and no mother nor father, nor grandmother nor grandfather, nor brother nor sister, nor uncle nor aunt, of the whole or half blood; and they admit, upon information and belief, that he left him surviving only two nieces, Frederica Ehman, daughter of Gottleib Roth, deceased, and wife of Casper Ehman, and Frederica Schweitzer, wife of William Schweitzer, a daughter of Jacob Roth, deceased, as alleged in said bill, and that he left only one grandniece, namely, Frederica Henbach, only child of Frederica Henbach, deceased, who was the daughter of John Roth, deceased, and wife of William Henbach, and that he left him only seven nephews, namely, Jacob Roth, John George Roth and
Gottleib Roth, sons of said Gottleib Roth, deceased, William
238 Roth and Jacob Roth, sons of said Jacob Roth, deceased,
and Christian Roth and Johannes Roth, sons of said John Roth, deceased; but they deny that said John George Roth left him surviving the said Madelaine Roth, as his widow or heir-at-law, as alleged in said bill as amended.

And further answering, they admit that said Gottleib Roth, Jacob Roth and John or Johannes Roth, deceased, as alleged, were brothers of John George Roth, deceased, and that they died intestate before the death of said John George Roth. They also admit that, as they are informed and believe, said nieces, grandniece and nephews, as set out in said bill, were born in lawful wedlock.

And further answering, they deny that they or either of them have received all or any of the rents and profits that have accrued since the death of said John George Roth from the premises described in said bill; and they deny the allegation that they are bound to account for the same.

And further answering, these defendants deny the allega-
239 tion set out in the amendment to said bill, to the effect that
said Madelaine Roth, by reason of her coverture, was incapable of making said agreement, release and assignment set out in their original answer, and bearing date the 9th day of September, A. D. 1873; and they deny the allegation that she was incapable of executing such release, agreement and assignment as aforesaid, without the said John George Roth uniting with her in the execution thereof; and they deny that such release, assignment or writing referred to is void as against said complainant for any reason whatever; and they deny the allegations in said amendment contained, to the effect that she was incapable in any way of executing and acknowledging the said instrument referred to; and they allege that at the time of such execution of such release or instrument she was an unmarried woman, and that her acts were binding upon her.

And further answering, they allege that said agreement, release and assignment of September 9, 1873, was ratified and confirmed in writing by said Madelaine Roth after the death of said John George Roth.

240 And these defendants, further answering said amended bill, deny the allegations made therein by said complainant to the effect that the said deed of conveyance by her to said Albert Staehel bearing date September 11th, 1876, and acknowledged before J. S. Potter, United Ssates Consul, on October 3d, 1876, was obtained from her by fraud and circumvention, and that she did not know or understand the contents thereof; but on the contrary they allege that said deed of conveyance was fully explained unto her, and that she executed the same before the said American Consul at Stuttgart, in the Kingdom of Wurtemburg, after full explanation made to her of its contents, and its legal effect, and that she received a full and adequate consideration for the execution thereof.

And they deny that any misrepresentations were made to her by said Amalie Staehle Roth, or by any other person, respecting the contents of said instrument, or its legal effect, but that said Madelaine Roth fully understood that said deed was made for the purpose of fully releasing all interest or pretended interest and claim of every description which she had or might have in or to the premises described in said deed; and they deny the charges that any
241 false, willful or deceitful representations or acts of any description were made or done for the purpose of defrauding the said Madelaine Roth, with reference to the effect of said instrument, or with reference to its execution.

And they deny the further allegation in said amendment contained to the effect that said Amalie Staehle Roth willfully, falsely, deceitfully and fraudulently pretended, represented, acted and did anything for the fraudulent purpose as alleged in said amendment; and they deny the allegation that said Amalie Staehle Roth thereby induced said Madelaine to believe that said deed was the instrument executed on the 26th day of September, 1876; and they deny that said Madelaine did sign it under the impression that it was the instrument referred to in said amendment; and they deny the allegation made by said complainant to the effect that said instrument so executed and acknowledged on October 3d, 1876, is not her act and deed; and they deny that it is void.

And further answering, these defendants believe that the deed so executed and acknowledged by said complainant was written
242 upon a blank printed in the English language, by the Chicago Legal News company, in the city of Chicago, and they believe that the same was filled in in proper form in the city of Chicago, and that the same was sent to said Amalie Roth or said Albert Staehle, for the purpose of having it executed by said complainant.

These defendants, further answering, deny the allegation to the effect that said complainant never understood the English language; and they deny the allegation that she could not read said deed in the English language; but they allege that she could read the English language, and could understand the English language, and that she

resided in the city of Chicago for many years prior to her return to the Kingdom of Wurtemberg, and prior to the execution of said instrument, and that she learned the English language in the city of Chicago, or in the United States of America; but, further answering, they allege that said instrument was fully explained to her by the United States Consul at Stuttgart, in the German language, in which she was well versed; and they deny the allegation
243 that said instrument was not for any consideration, and that it was not made to more fully carry out the intention of said instrument, dated the 26th of September, 1876; but they allege it was made for the purpose of more completely carrying out the intention of said instrument of the 26th of September, 1876, so that the intention of the parties might be effectual, in accordance with the laws of the state of Illinois.

That in consideration of the payment to her of the sum of $8,000 on September 9th, 1873, and in consideration of the further agreement, release and assignment, made by her on September 26th, 1876, and in order to carry out and effectuate the intention of the parties to the instrument aforesaid, it was her moral and legal duty to execute the instrument aforesaid, and that there was in consequence a full consideration for the same, and that the execution thereof was done for the purpose of preventing all further litigation and disagreement between her and the said Amalie Roth, and to finally settle all disputes concerning the estate of said John George Roth.

And these defendants, further answering, allege that on the 21st day of July, 1855, the date of the said pretended intermar-
244 rige between the said John George Roth and said compainant, Madelaine Roth, and ever since that time and up to the present time, and for many years prior to that time, there existed a statute or law in the Kingdom of Wurtemburg to the effect that no marriage of any of its citizens or subjects consummated out of the kingdom, without the consent of the king or the government of the said Kingdom of Wurtemburg, should be valid and binding, but that all such marriages of any of its citizens or subjects, without the consent of the king or the government of the Kingdom of Wurtemburg, were declared by the statutes of said kingdom, so existing at the time of said pretended intermarriage and so continuing to exist, to be null and void.

And these defendants, further answering, allege and set up that on or about the 24th day of April, A. D. 1873, the royal matrimonial court of Ellwangen, in the Kingdom of Wurtemburg, in a certain cause therein pending, wherein said John George Roth was complainant, and said Madelaine Roth was defendant, entered a decree annulling, vacating and setting aside the said pretended marriage between said John George Roth and said Madelaine Roth, and
245 that the basis of said decree was to the effect that the said pretended marriage between the said John George Roth (and

the said Madelaine Roth) *nee* Moser, was had without permission from the government of Wurtemburg to marry, and the said pretended marriage was then and there declared null and void, which said decree of nullity is still in full force and effect, and which these defendants now rely and insist upon as if it were here specially pleaded; that said matrimonial court had jurisdiction of the subject matter of said proceeding and decree, and also had personal jurisdiction over said Madelaine Roth and said John George Roth; and that both said Madelaine Roth and said John George Roth were then domiciled and living in the Kingdom of Wurtemburg, and in the district where said court was held, and that both were at the time when said proceedings were commenced, and at the time of the decree aforesaid, subjects of the Kingdom of Wurttemburg, and were subject to all its laws; that in and by the laws of the said Kingdom of Wurtemburg, the said royal matrimonial court aforesaid had power for the cause stated in said de-
246 cree to decree said marriage null and void, and that in entering said decree it acted within its powers, and had full and complete jurisdiction to render the decree it did render, under the laws of said kingdom, and to dissolve the status then existing betwixt said Madelaine Roth and said John George Roth; that said John George Roth emigrated from said Kingdom of Wurtemburg to the State of Illinois, and that he came to the State of Illinois temporarily and with the intention of returning to said Kingdom of Wurtemburg, of which kingdom he always remained a subject from the time of his birth to the time of his death.

247 And these defendants, further answering, deny the allegation made in said amendments to the effect that the laws referred to of said Kingdom of Wurtemburg are by their terms confined to marriages celebrated in such kingdom.

They deny the allegations that it does not appear that any suit or proceeding of any kind was ever pending in said royal matrimonial court between said Madelanie and said John George Roth, to which she was a party, and they further deny the allegation that no such suit was ever pending in which there was any pleading, issue or evidence, hearing, adjudication or determination of or as to such marriage, but they allege the contrary thereof as heretofore set out; and they deny the allegation that such marriage was never declared null and void at any time by any court, or that no decree was ever entered of record or appears from any record.

And further answering, they deny the allegation that
248 said law of Wurtemburg, or that the decree aforesaid, or that the marriage between said John George Roth and this defendant, Amalie Staehle Roth, is against the public policy of the State of Illinois, but whatever may be the case respecting the laws of the State of Illinois.

They allege that the same are not against public policy in the Kingdom of Wurtemburg, and that said John George Roth and said

Madelaine Roth having submitted themselves to the laws of the Kingdom of Wurtemburg, and being subject to the same, were also subject to all decrees entered in any of the courts of the Kingdom of Wurtemburg, which had jurisdiction over their persons and over the special matter of such decrees.

And they allege that the State of Illinois has no interest in any status which may be declared or created by the government of the Kingdom of Wurtemburg as between any of of the citizens or subjects domicled and living in the Kingdom of Wurtemburg, and
249 they deny the legal conclusions drawn by counsel in said amendments that such decree and such laws should not be recognized by the laws of any christian people or other nations.

And these defendants, further answering, deny the allegation that said complainant and said John George Roth were ever legally married in the city of Chicago, while they were domiciled in it. And in accordance with the then laws of the state of Illinois.

And they further deny that, at such time, they were without any intention of ever removing from said state.

And they deny that, after said John George Roth and said Madelaine returned to the Kingdom of Wurtemburg, their marriage was thereafter to be governed by the laws of the state of Illinois; and they further deny the allegation that the intermarriage
350 between John George Roth and this defendant, Amalie Staehle Roth, was bigamous, polygamous or void; and while these defendants admit that real estate situated in the state of Illinois descends in accordance with the laws of the state of Illinois, they allege that the status of every person at the time of his death is governed by the law of the place of his domicile, and not by the law of the place where such property may be situated.

And further answering, these defendants deny the allegation that said John George Roth was naturalized in the state of Wisconsin, or in the city of Chicago, before the said pretended intermarriage between him and said complainant.

And further answering, these defendants deny that said John George Roth, upon moving to the city of Chicago from the state of Wisconsin, became a voter in the state of Illinois within six months thereafter, but, whatever may be the fact in regard thereto,
251 the same did not make him a citizen of the state of Illinois, or the United States of America; nor did the said John George Roth ever renounce his allegiance to the King of Wurtemburg; and they deny the allegation that the marriage relation never existed between said John George Roth and this defendant, Amalie Staehle Roth; they deny the allegation that the marriage and inheritance contract made and executed on or about the 20th day of March, A. D. 1874, and referred to in said amended bill, was not valid or binding.

And they deny also the reasons given by the pleader in said amendments for such conclusion.

And further answering, these defendants deny explicitly, as they have heretofore done, that said Amalie Roth ever lived or cohabited with said John George Roth, prior to said divorce or prior
252 to her intermariage with him, as stated in the answer to said original bill.

And they deny the allegation that said Amalie Staehle Roth instigated the separation between said John George Roth and said complainant.

That the allegations in said amendment to said bill are slanderous and impertinent, and are without foundation in fact; and they further deny that this defendant, Amalie Staehle Roth induced said John George Roth to obtain said decree of divorce from said Madelaine; they deny the allegation again repeated, that the marrirge betwixt this defendant, Amalie, and said John George Roth was polygamous or in any manner invalid, but that the same was legally and validly entered into and consummated on the 27th day of November, A. D. 1873.

And these defendants deny the allegation that said post
253 nuptial settlement, so called in said amendments, but more particularly named marriage and inheritance contract, was without consideration; and they they deny that the consideration therefor was infamous, and they deny that it was void, and that all such allegations in the amendments to said bill are instigated by malice and are without any foundation whatever in fact; and they allege and repeat that said marriage and inheritance contract set out and referred to in their answer to said original bill, is valid and binding, and such a contract as said John George Roth had a right to enter into, at the time, under the laws of the Kingdom of Wurtemburg and of the state of Illinois; that afterwards, and subsequent to the 1st day of July, 1874, and prior to his death, the said John George Roth ratified and confirmed said marriage and inheritance contract; that said marriage and inheritance contract was executed by the said John George Roth and by this defendant,
254 Amalie Staehle Roth, on the 28th of March, 1874; that said marriage and inheritance contract, so called a post nuptial agreement in said amended bill, has been ratified and confirmed by said complainant, since the death of said John George Roth; and these defendants deny the allegation that said marriage and inheritance contract is void for uncertainty, either in the description of the premises or of the parties who were to take thereunder; and they further deny that said marriage and inheritance contract was obtained by undue influence, fraud, imposition or other unlawful device, practiced by this defendant, Amalie, upon the said John George Roth, and they deny that the said contract was not fully and deliberately made, or that it was not fair and proper, or that it was unjust and unconscionable, or that it was unreason-
255 able; and they further allege that said contract was legally executed in accordance with the law of the place where it was executed, which was in the Kingdom of Wurtemburg.

And they deny also the allegation that the said marriuge and inheritance contract was not executed in accordance with the laws of the State of Illinois, but they allege that it was duly executed and delivered in accordance with the laws of the State of Illinois, as well as in accordance with the laws of the Kingdom of Wurtemburg.

And further answering, these defendants deny that said marriage and inheritance contract was capable of being revoked by said John George Roth, and they deny that it ever was revoked, but they allege that it was legal in all its parts and became operative upon the death of said John George Roth; and they again deny the allegation that said marriage and inheritance contract is invalid in any way for any of the reasons set out in said amendments.

256 And they deny that it was against the public policy of the State of Illinois.

And these defendants, further answering, deny the allegation in said amendments to the effect that said John George Roth never made or executed the agreement referred to bearing date the 12th of July, 1876.

And they allege that said instrument was duly executed in accordance with the laws of the State of Illinois, for the purpose of affecting the title to real estate; they deny that said deed or instrument in writing bearing date the 12th day of July, 1876, is void for the reasons stated in said amendments, or for any other reason.

And further answering, these defendants, for the information of the complainant, would state that the instrument referred to was executed by said John George Roth prior to his decease.

257 And they also deny that at the time of the execution thereof, which was on the 12th day of July, 1876, the said John George Roth was in any manner incapacitated or unable to make or execute or understand the instrument aforesaid.

But they allege that he did understand its contents, that he knew all about it, and that it was deliberately made and executed by him, and that the transaction was proper and fair, and that he had legal advice and counsel in relation thereto, and that it was made also for a valuable consideration, and that it was made of his own free will, and without any dictation or undue influence from any one; and they deny the allegation that no provision was made in said instrument so executed on July 12th, 1876, for the payment to his relatives of the several sums of money referred to in said marriage and inheritance contract.

And these defendants now repeat that said instrument so bearing date July 12th, 1876, was duly executed by said John George

258 Roth, and was effectual to pass the title to said Albert Staehle subject fo the rights of this defendant, Amalie Staehle Roth, and to the rights of the relatives of said John George Roth, provided for in said marriage and inheritance contract.

And they again deny the allegation repeated that said contract was executed by said John George Roth by restraint, or by false repre-

sentations, or imposition or undue influence, or restless importunities, or by fraud, or deception, or force, or fear, or violence, or threats, or duress, or restraint, or by any unlawful means or device; and they deny further that this defendant, Amalie Staehle Roth, exercised or practiced upon said John George Roth in any manner or way as set out in said amendment.

And they deny that this defendant, Amalie Staehle Roth, with any person conspired together or acted in concert to defraud or
259 impose upon said deceased; and they deny the allegation that it was understood between him and the said Amalie, or between him and any other person at the time of the execution of the same, that said instrument was not to be obligatory on him, the said John George Roth, or upon this defendant Amalie, or that the property referred to was to remain in him, the said decedent, as if said instrument had never been executed.

And they deny that said instrument so executed on that day was testamentary only in its character, or that it was to have no operation until after his death.

And they deny that said instrument was executed for any fraudulent purpose whatever, or to circumvent or prevent any incumbrance or claim of any of the brothers or sisters of said John Geroge Roth or their descendants; but they again allege that said instrument was made subject to the rights of said Amalie and of
260 the brothers and sisters of said John George Roth and the descendants thereof, as provided for and protected in said marriage and inheritance contract before referred to.

And they deny that said John George Roth was in a dying condition at the time the same was executed, or that he was in any manner incapacitated by reason of the near approach of death; but they allege that at the time the same was executed there was no expectation of the immediate death of said John George Roth, but that his death resulted suddenly and without any expectation on the part of his relatives or friends; but they allege that said Roth was fully capable of comprehending the subject matter and contents of said instrument of July 12, 1876, at the time it was so executed by him.

And these defendants, further answering, deny that the said instrument so executed on July 12, 1876, was without consideration.

261 And further answering, they deny the allegation that said contract last referred to cannot be enforced in a court of equity.

And deny the allegation that said property descended to said complainant, or to the heirs at law of said deceased mentioned in said bill, or either of them.

And they deny that said contract is void; and they deny that it is against public policy, or against the policy of the laws of the State of Illinois.

They deny also the allegation that said instrument last referred to was never delivered, but allege that it was delivered unto said Albert Staehle during the lifetime of said John George Roth.

And these defendants, further answering, say that without specifically pointing out the various allegations with reference to said contract and deed of sale of the 12th day of July, 1876, they now deny each and every one of them, and the conclusions sought to be drawn therefrom.

262 And further answering, they deny the allegations and conclusions in said amendment contained, with reference to the deed made by this defendant Amalie to said Albert Staehle, bearing date the 8th day of September, A. D. 1877.

And further answering, these defendants deny the allegation that the said agreement so entered into between said complainant and this defendant, Amalie, bearing date September 26, 1876, was made for the purpose of defrauding said complainant, as is alleged, but that the same was made after full and due consideration on the part of said complainant, and with full knowledge of its contents, and with full knowledge of the condition and amount of the estate so left by said John George Roth, deceased, or which he possessed during his lifetime.

And further answering, these defendants deny the allegation that said contract or instrument bearing date September 26th, 1876,

263 was signed by said Madelaine upon a blank piece of paper.

And they deny that such instrument was written above her name upon such blank piece of paper as alleged; but they do allege that said instrument was duly written out and prepared, and was fully explained and made known to said Madelaine before the same was executed or signed by her, and that she had full knowledge of its contents prior to its execution by her as it now exists.

And they deny the allegation also that she signed said instrument for form only, but allege that it was intended to be, and was a final settlement of all claims or pretended claims of the said Madelaine Roth of or upon the estate or property left by said John George Roth, deceased, and a full settlement of all claims or demands which she had or might have against this defendant, Amalie, and said Albert Staehle, or either of them.

That these defendants do not know what said Madelaine

264 Roth may have believed, in reference to her rights in the estate of said John George Roth after his decease, but they do allege that she did not have any rights whatever in or to the estate, real or personal, of said John George Roth, deceased at the time of the execution of said instrument, bearing date September 26, 1876.

And they deny the allegation that said complainant is not bound by said instrument of September 26th, 1876.

And they deny the repeated allegation made by her in said amended bill, that she did not have knowledge or comprehension of the facts with reference to the estate of said John George Roth or

with reference to the contents of said instrument of September 26th, 1876, at the time the same was executed by her.

And they further deny the allegation contained in said amendments to the effect that she did not sign said instrument of September 26th by way of settlement and compromise of a disputed
265 claim on her part in and to the estate of said John George Roth, deceased.

And they deny the allegation that such settlement was not accepted in full satisfaction of all such pretended claims upon her part.

And these defendants, further answering, deny the allegation that said Muller, referred to in said amendments, was not the confidential adviser of said Madelaine.

And they deny the allegation, that said Muller betrayed and deceived her, and advised her in the interest of this defendant, Amalie, or conspired with and aided her to procure the said settlement from said complainant, bearing date September 26, 1876; but they allege that whatever advice may have been given by said Mueller to said Madelaine, was in her interest and for her
266 benefit.

And these defendants, further answering, deny the allegation that the consideration in said comtract of September 26, 1876, was not a full consideration for the interest of said complainant in the estate of said John George Roth, deceased.

And they deny the allegation, that it was only one-fortieth part of her interest in said estate.

And they deny the allegation that said instrument last referred to is void as against said complainant; and they deny the allegation in said bill contained, that this defendant, Amalie, never intended to pay said complainant any further amount of the consideration expressed in said last mentioned agreement, but she alleges now that she is ready and willing to pay the balance, and here offers and tenders the same to said complainant; but that said complainant has refused since the institution of the said suit, to accept any further portion of the said consideration. As to the consid-
267 eration for the deed so executed and delivered by the descendants of the brothers and sisters of the said deceased, said complainant has nothing to do; but they deny that the consideration for the said deeds so executed by the parties referred to is unlawful, or that it renders either of said deeds void.

And further answering, these defendants do not know, and call upon said complainants for proof if it shall be material, as to whether said Jacob Roth, John George Roth and Gottlieb Roth, referred to in said amendments, have been or are insolvent, or in great need of means for their support, nor do they know their method of obtaining a living, or whether they could obtain employment, as alleged, or whether they had a family, or either of them had a family to support.

Further answering, they do not know whether the other
268 grantors in said various deeds referred to were able to speak the English language, but they allege that some of them were, but whether or not they were able to speak the English language, or understand it, that, prior to the execution of the said deeds referred to, their contents were fully explained and made known to them.

And further answering, they deny the allegation that the grantors in said several deeds did not have capacity sufficient to understand the same, or for the protection of their rights.

These defendants deny the allegation that said heirs referred to in said amendments are impulsive, unreflective, improvident, inconsiderate, credulous and confiding, or very susceptible of imposition, as alleged in said amendments, nor that they have continued to possess the undesirable qualities above referred to; but, on the contrary,
they allege that said grantors above referred to had full
269 capacity to execute the instruments which were executed by them, that they fully understood their contents, and were in no wise imposed upon by these defendants or any other person.

And these defendants, further answering, say that the execution of all the deeds by all the persons referred to in said amendments, as the heirs at law of said John George Roth, deceased, were fair, without fraud, and were made for the purpose of carrying into legal effect the provisions by them so made, by said John George Roth, and whatever remains due to them of the provisions so made for them in said marriage and inheritance contract above referred to the defendants, are ready and willing to pay, and here tender the same to them.

That all of said grantors so referred to since the commencement of this suit, and after complete and full knowledge of all the facts
with reference to the estate of said John George Roth, de-
270 ceased, have accepted payments in pursuance of said marriage and inheritance contract referred to, and with full knowledge of this litigation, and that they are now estopped to allege or in any way manner set up any right in or to the estate aforesaid, excepting so far as anything may remain due to them under said marriage and inheritance contract.

They deny the allegation that said heirs, so-called, have never been paid the consideration expressed in the deeds aforesaid and so provided for them in said marriage and inheritance contract.

And they deny the allegation that said Albert Staehle was insolvent at or prior to the time of his decease, as alleged and set forth.

They deny the allegation that said conveyances so referred to are against public policy, as alleged in said amendments.

These defendants, further answering, deny the allegation
271 that said Jacob Gottlieb and John George Roth, and said Frederica Ehman, are each the owners of and entitled to one twenty-fourth part of the real estate described in said bill, and are entitled to one thirty-sixth part of its rents and profits.

And they deny the allegation that said Johannes Roth, Christian Roth and Frederica Henbach are each the owners of and entitled to one-eighteenth of said real estate, as alleged in said amendments, and are entitled to one twenty-seventh part of the rents and profits as alleged.

And they deny the allegation that said Jacob Roth and William Roth and Frederick Schweitzer are each the owners of and entitled to one eighteenth part of such real estate so described, and to one-twenty-seventh part of its rents and profits, as alleged in said amendments.

And they here allege that none of the persons above referred to in the amendments to said bill as having an interest in said
272 estate have any interest whatever therein.

And they deny the allegation again repeated that said complainant and the other persons mentioned in said amendments as heirs of said John George Roth, deceased, have any pecuniary interest or otherwise, the said real estate so described in said bill, or any part thereof.

And these defendants now refer to the answer heretofore filed by this defendant, Amalie Staehle Roth and Albert Staehle, in this cause on October 9th, 1878, and adopt the allegations therein contained and make the same apart of this their answer; and they also refer to the answer to the bill of revivor filed herein, and make it a part of this their answer.

And these defendants deny all unlawful combination and confederacy in said bill charged without this that any other matter or thing material or necessary for these defendants to make an-
273 swer unto, and not herein well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready to aver, maintain and prove as this honorable court may direct, and humbly pray to be hence dismissed with their reasonable costs.

AMALIE STAEHLE ROTH.
MATHILDE STAEHLE.
ALBERT STAEHLE.
EMMA STAEHLE.
By ROSENTHAL & PENCE,
Their Solicitors.

319 Amendments and supplement to the answers of Amalie Staehle Roth, one of the defendants in said cause, to the original bill of complaint and amendments thereto of Madelaine Roth, complainant:

This defendant, by leave of court first had and obtained, saving and reserving all benefit and advantage of exception to the many errors and insufficiencies in said bill and amendments and supplement thereto, by way of amendment to her answer alleges:

That at the time of the pretended intermarriage between said John George Roth and said complainant on the 21st day of July, A. D. 1855, and for a long time prior thereto and ever since that time there existed a binding statute or law in the Kingdom of Wurtemburg to the effect that every marriage of a Wurtemburg subject, which should take place outside of the said kingdom, without a license or permission previously applied for and obtained from
320 the Government of said Kingdom, should be invalid and void (and this defendant strikes out from her former answer the allegations pertaining to the laws of the Kingdom of Wurtemburg relating to marriage.)

That one of the issues involved in the said suit which was so brought by said John George Roth against said Madelaine Roth for the nullity of said marriage in which said decree was entered and which had necessarily to be decided by said court, and which was decided by said Royal Matrimonial Court, was the citizenship of said John George Roth at the time of the said pretended intermarriage between said complainant and said John George Roth; and that said court did find and decide that said John George Roth was, at the time of such intermarriage, a subject and citizen of the Kingdom of Wurtemburg.

That said Madelaine personally submitted to the jurisdiction of said court and to the final determination thereof in said cause.
321 And, by way of further amendment to said answers, this defendant, Amalie Staehle Roth, alleges:

That said instrument of July 12, 1876, was executed and delivered to said Albert Staehle, her brother, by her said husband, for the purpose of more fully accomplishing and carrying out his intentions towards this defendant, and the purpose of enabling said Albert Staehle to act for her and in her interest. That the consideration expressed in said instrument has never been paid, or any portion thereof.

That in the summer of 1877 it became necessary to sell and dispose of said real estate in said city of Chicago, in order to fully pay off and satisfy the relatives of said John George Roth, so designated in said marriage and inheritance contract, the amounts so due to them, and for that purpose and in order to carry out the general intention of her said husband, and for the purpose of enabling her said brother, Albert Staehle, to sell and dispose of said real
322 estate so situated in the city of Chicago, she executed and delivered to him the said deed bearing date September 8th, A. D. 1877, and for no other consideration. That said Albert Staehle never paid her any money or other consideration, and that he acted under her directions and by virtue of the written power of attorney made by her to him.

And this defendant further alleges that the deed of conveyance bearing date September, 1876, and executed and delivered by said Madelaine Roth on October 3d, 1876, hereinbefore set out and made to run to said Albert Staehle, as granteee, instead of this defendant,

for the same general purpose, as her brother had said estate in charge for her, and was then in the city of Chicago, and was endeavoring to sell and dispose of the same at that time.

That said deed, though made to said Albert Staehle, was for her benefit, and the same was so made by said Madelaine to her said brother Albert by the request of this defendant; that it was
323 made for the purpose of more fully carrying out the intention of all parties, and in pursuance of the agreement of September 26, 1876, and in order to fully complete and finish the same, and to forever settle and bar every claim or right to said property, or pretended claim or right on the part of said Madelaine.

That on or about the A. D. 1878, said Albert Staehle departed this life intestate, leaving him surviving Mathilde Staehle, his widow, and the following children, viz.: Albert Staehle, Emma Staehle, Julie Staehle, Mathilde Staehle, Eugene Staehle and Alfred Staehle, and none other and no descendant of any desceased child.

That at the time of the decease of said Albert Staehle, he held the legal title to all said premises described in said bill, in trust and for the use of this defendant, and that by his death the legal title thereto vested in the children and heirs at law of said Albert Staehle, and thereupon they held the same in trust for this defendant,
324 in the same manner that the same was held by the said Albert Staehle.

That said premises, being so held in trust for this defendant, the said Emma Staehle, and Julie Staehle, and said Mathilda Staehle, the widow of said Albert Staehle, did on June 25th, 1880, execute and deliver unto this defendant a deed of conveyance of all their right, title and interest in and to said premises, which said deed of conveyance was filed for record in the Recorder's Office of Cook County, Illinois, on the day of , A. D. 1880.

That said Albert Staehle, the son of Albert Staehle, deceased, did on the 4th day of September, A. D. 1880, execute and deliver unto this defendent a deed of conveyance of all of his right, title and interest in and to said premises, which deed was filed for record in the Recorder's Office of Cook County Illinois, on the day of , A. D. 1880.

That said Albert Staehle, the son, was over twenty-one years of age at the time of the execution and delivery of said deed
325 of conveyance by him, and that said Emma and Julie Staehle were respectively over eighteen years of age at the time of the execution and delivery of said deed of conveyance by them.

And having now fully answered, she prays to be hence dismissed, &c., &c.

AMALIE STAEHLE ROTH.
By ROSENTHAL & PENCE,
Her Solicitors.

ROSENTHAL & PENCE,
Sols. and of Counsel.

329 Your oratrix for further amendment to her said bill and amendment thereof our leave.

That since the filing of her bill and amendment thereto herein she has been informed and believes that there is no such person as Frederica Henbach therein named, although she had believed that there was and that she was entitled as therein stated, and by mistake stated that such a person was entitled to that to which Frederick Henbach only is.

That all the statements made therein of and concerning said supposed to be Frederica are true as to said Frederick, save that he is not a grandniece but is a grandnephew of John George Roth, deceased, in such bill named, and is a son and not a daughter of the persons therein stated to be the father and mother of said supposed to be Frederica.

That your oratrix has dismissed said bill and amendment as to said supposed to be Frederica, and by this amendment applies all the statements in each thereof save as aforesaid to said Frederick

330 and makes him a party defendant to each thereof and hereto.

That if William and Wilhelm are not the same even as a given name of a person of German origin.

Your oratrix has in said bill and amendment mistaken the given name of each William Roth and William Schweitzer, by so calling them therein instead of Wilhelm, as she has since been informed that the given name of each of them is Wilhelm, and whether such given names are the same, your oratrix amends such bill and amendments by stating that the given name of each of them is Wilhelm, and in such given name instead of that of William, and the surname of each of them makes each of them a defendant to said bill and amendment hereto.

331 That until within a few days she had never been informed, nor thought that her said husband previous to his removal from the city of Chicago in said county, at the time stated in said bill had removed to the Kingdom of Wurtemberg at the time stated in said bill, for the purpose of endeavoring to dissolve their marriage relation by resort to the so called law of said kingdom under which it is by said Amalie claimed in this suit that he did, but which he did not, and which he and said Amalie knew long before the time of the alleged rendition of the pretended decree of nullity of marriage alleged in her pleadings in this case, that he could not as they always have that he never did by such so called decree, nor had she been informed or thought that an unlawful intimacy of the character charged in said bill and amendment had existed between them as early as about A. D. 1857, or that it had earlier than in or about A. D. 1867.

All which she now believes to be true and so charges. Although she has ever since about the fall of A. D. 1856, believed that he intended if he could to have such relation dissolved, and that if he

could not, to forever desert and abandon her, and that from about sometime in A. D. 1864, until he forced her to leave him in the fall of A. D. 1870, and not of A. D. 1871, as she by mistake
332 stated in her bill had repeatedly told her that she should leave him and his home, and that she had often and as often she thought it safe so to do refused to, and such refusals very much excited and enraged him.

That on account of such her ignorance of such intention and purpose of her said husband, and that such intimacy had existed so long she omitted in said bill and amendment any statement of his maltreatment of her, previous to the time when she supposed that such intimacy existed and erroneously attributed that so stated wholly to such intimacy as on account of her now belief of such, his intention and purpose she now thinks that it and that hereinafter to be stated or part of the latter was only intensified thereby, not intending otherwise to modify any statement of or in relation to her said husband's treatment of her or the intimacy existing between him and said Amelie or otherwise to affect either.

That during the marriage of her husband and herself, and while they lived in Chicago his conduct toward her was severe, cold, malicious and distracting and humiliating to her, and fault finding without any just cause therefor.

That his conduct was such toward her even in sickness with which she was much afflicted and in which he furnished her
333 no help, save for a short time in that consequent upon childbearing and birth.

That in removing to Europe they took a deck passage across the ocean, she having only such food as was furnished deck passengers, which was salt-pork and beans and tea and coffee. That on their passage he was so distant and neglectful of her that she seldom, if ever, saw him in daytime, save at meals, and that deck passengers often asked her whether she was traveling alone.

That after arriving in Europe they travelled to Strassburg, in Allsace, in third class cars, subsisting on cheap food.

That on their way to Strassburg, they stopped a month at Stuttgart, in the Kingdom of Wurtemburg, at a very cheap and common boarding house, during which she seldom saw him in the day time.

That they arrived at her father's house in said Strassburg, in or October, A. D. 1856, when she so changed in appearance on account of his maltreatment of her, that her father scarcely knew her, although she had first left his house to reside elsewhere, only about eighteen months before then.

That her husband remained there with her about eight days, when he left her there against her will, deserted and abandoned her without any cause whatever, and went to Schorndorf, in said kingdom, and bought a fine, spacious and costly residence, in
334 which he resided until his death.

That she remained at her father's house until the fall of A. D. 1863, to which time he had furnished her only about four years support after so leaving her there, although a rich man, and had been for years before their marriage, as she is informed and believes. That the character of his conduct toward her from the time that they left said Chicago to the time that he so left her at her father's house, was about the same as stated to have been in said Chicago.

That he having so deserted and abandoned her for such time, and having refused to live with her for about seven years, without any just cause whatever, and she being without any means of support, started to said Chicago in the fall of A. D. 1863, for the purpose of there bringing a suit for divorce against him, and arrived there that fall, and soon thereafter commenced there against him a suit for divorce; that not long after he had had notice by publication of the suit, he came there to settle it, and stated that he did not want her to obtain a divorce, because fearing that his property would be divided.

That he, after two months pursuance of, and promises to her, that he would be a kind and good husband, and treat her well and better conduct himself towards her if she would with-
335 draw such suit, and go and live with him in said Schorndorf; and that she relying on such promises, consented to withdraw the suit, and did, and went with him to said Schorndorf, crossing the ocean in the second-class cabin, and arrived there in A. D. 1864.

That from that time to the fall or winter of A. D. 1870, when he forced her to leave him, he treated her in about the same way that it is in her answer herein stated, that he did from in or about A. D. 1867, to A. D. 1871, by mistake for A. D. 1870, that he did, except that was not intensified as afore.

And also repeatedly told her that she should leave him and his home as hereinbefore stated. That the only period in which he ever treated her with even apparent kindness or respectfully, or as a husband should a wife, or otherwise than as herein and in said bill and amendment stated, was that commencing with his such arrival in said Chicago, and theirs in said Schorndorf aforesaid, which, as well as such maltreatment of her was, as she believes and charges, induced more effectually to resort to said so-called law as aforesaid only, and so charges. That she is naturally nervous, hasty, inconsiderate, unreflective, and liable to surprise, impulsive, credulous, confiding, forgiving, unwary, and averse to displeasing others to the extent of sacrificing a pecuniary interest to avoid it, and sus-
336 ceptible of their influence, though her enemies, specially in pecuniary matters, of her interest, in which she is extremely unmindful and so devoted to her martial relations and the character thereof, as never to have resented his treatment of her personally, and to have endeavored to prevent its being known universally. All

whieh that is susceptible of so being, including such devotion, was by such his treatment of her so intensified previous to A. D. 1873, and continued to be until she removed from Europe in A. D. 1877, that she was in such distress and so nervous and melancholic, and her mind so demented and distracted, that it was incapable of continuity of thought or purpose as comprehension of her pecuniary interests, and so averse to contact with others in business matters, especially if they related to her husband or his estate, that she would have sacrificed any such interest could she have comprehended it, which she could not have, to have avoided such contact, or to have been released from it or offending others through her enemies, and charges that at the time of the alleged making of each her alleged agreement charged in the answer in this case to have been made between her and her husband, her and Amalie Staehle Roth, so called, and of the alleged deed by her to said Albert Staehle,
337 deceased, she was on such account so affected which, independent of other facts sufficient therefor, stated in said bill and amendment, and herein renders each thereof void as against her, and rendered her incapable of stating the facts of her case so fully or correctly as to enable any one, though he understood her language, which her only solicitor, C. M. Harris, never did, to draw a bill presenting them correctly without several efforts therefor, if at all, although such condition of her mind has improved. (That the German language which she speaks is peculiar to the county called Allsace, now a part of the German Empire, and somewhat different from that of the Kingdom of Wurtemburg, where all such pretended agreements and conveyances are alleged to have been made, and of all other places, as she thinks.)

That she cannot converse with her solicitor only through an interpreter, and that she has never had any special one therefor, but different ones who happened to be attainable when one was required. That altthough, as late as the afternoon of the 26th of September, A. D. 1876, and but a few hours before the alleged signing of the pretended agreement of that date, in said bill described, your oratrix would have shrank at the sight of one whom she regarded
338 as so criminal and contaminating, as she did said Amalie. Yet within that time, through the influence of Muller in said bill named, and on invitation of said Amalie she became her guest, at her house, and their instrument to execute their will by signing any instrument or instruments which they or either of them might direct her to without thinking, knowing or caring what they were or whether she should, and without the capacity for either, and there and so remained some six days, and under sinster, yet apparently disinterested, kind treatment by said Amalie and her household and her friends, said Muller and Steiger, in said bill named, or her and some of them and other of her friends and their friends, or her and some of them, unknown to your oratrix, induced her or her and said Muller and Steiger, or some of them soon became not only an

ardent friend of Amalie, but so infatuated with her as to have become an admirer of her and to have publicly and repeatedly declared such friendship and admiration and, if possible, more submissive to her will than she had been to that of hers, and said Muller and Steiger and absolutely resistless thereto in any business transaction, none of which did she think to state in said bill or amend-
339 ment. That had she thought thereof and of the condition of her mind and body as stated in said bill and herein, and had she known that the 1,000 marks which were paid her on the afternoon of the 30th September, A. D. 1876, was not payable until about one year thereafter and without interest, instead of supposing, as erroneously alleged in her bill, that it was payable and had been paid at the alleged time of the making of the pretended contract of the 26th September, A. D. 1876, or thought of the present of a hundred marks, which said Amalie made to her, between said 30th of September and the time that she signed said so-called deed, and after she had received such payment or known that said Amalie had been expecting to receive the draft of the so-called deed, which she signed as aforesaid, for some time before said 26th day of September, and that she had been kept at her house and treated as aforesaid, although having intended to have left on the next evening after going to it and had been paid the thousand marks nearly a year in advance, although no interest was payable thereon for that time, and made a present of the one hundred marks to induce her to sign such draft, and that it was dated the 11th of September, A. D. 1876, and that she and said Muller and Steiger had conspired to, by the exercise of undue influence
340 over her to induce her to sign such a draft before she signed it, she would not have, as she ignorantly and unthoughtfully and erroneously did in said amendment stated; that she would not have signed it if she had not thought that it was the so-called agreement of the said 26th of September, and that it was necessary that she should sign it before the consul, as anything from which it could be inferred, because it is not true, and that if she had remembered and known what is hereinbefore stated that she did not, which she did not, and which did not occur to her mind, has became known to her until within a few days, she would have known that it was not true and would not have so stated, but instead thereof, would have stated that she signed it because also of the facts hereinbefore stated, of which she at the time of making such amendment did not think, and of those so herein stated, of which she was not then aware, all which are true, and which she now specially charges as being of themselves sufficient to render said so-called deed void as against her.

That she did not think to state in said bill or amendment that after said Muller had, at his house, on the morning of the said 26th September stated to her, among other things, that he be-
341 lieved that she, your oratrix, would give said Amalie trouble,

and that he had arranged the matter, and that although she had no right whatever to claim anything from the estate of her deceased husband; that said Amalie would give her 10,000 marks, because her husband had not given her enough, and that she then asked him how he could ask her to go to see a woman who had caused her so much sorrow and pain, and stated that she had come to see her husband's grave, and for no other purpose, as is stated in said answer. And that thereupon she returned to the house of Mrs. Webber, in said bill named, never intending to go to see said Amalie, nor expecting to receive anything from her, nor intending to return to said Muller's, and there eat her dinner at or about the usual hour therefor, and that soon after said Muller sent his hired girl to said Mrs. Webber's to inform her that he wanted her to return to his house, and that she did that afternoon, and that he then, by resistless entreaties prevailed upon her to go to said Amalie's house, nor to state in either that after the alleged making of said contract of said 26th September, she returned to the house of said Mrs. Webber, where she desired and expected to remain until she
342 started home, and she believes would have had not said Muller gone to the house of said Mrs. Webber in the night of that day, and taken her therefrom to that of said Amalie again, to which she had never expected to return, and which she intended to and would have left the next day, and would have could she have resisted the importunities of said Amalie and Muller, which, or with that of others, as aforesaid, detained her there until the 3rd October thereafter.

That she has within a few days been informed and believes that said Amalie has since the death of your oratrix' said husband used and converted to her own use a large amount of money, bonds, rights and credits which at the time of his death belonged to him, and which as appears from said bill and amendment, and herefrom descended to your oratrix as his widow as aforesaid, subject to payment of debts, if any, against his estate, and therefore she asks that said Amalie be required to make an account of all thereof, and required to account therefor, and that in case any of the real estate in said bill be set off and partitioned to said Amalie or any one for her that a decree be rendered herein for the amount which may be found due from said Amalie to your oratrix for what she has so used
343 and converted in favor of your oratrix and against said Amalie, not exceeding the value of any such real estate as set off, if any, to her or any one for her, and not to be enforced only as against such real estate, and that it may be made a lien thereon if so set off and partitioned as aforesaid, and that such real estate be sold for the satisfaction thereof, without prejudice to the rights of any of the heirs at law of said John George Roth, deceased, in said bill named, or any of them.

Your oratrix states that if said so called contract of the 12th of July, A. D. 1876, is valid, which it is not, that she as such widow as

appears herefrom, and from said bill and amendment, is entitled to the purchase money therein stated and provided, and the interest that has accrued thereon, subject to payment of debts as aforesaid only, if any, but states and charges that it is not and is void. Yet, asks that if it shall appear that it is valid, that a decree be rendered in her favor for the amount of such purchase money and interest, and be made a lien upon all the real estate described in said bill, and that it be sold for the satisfaction thereof, and that the proceeds of such sale be applied, first, to the payment of costs herein,
344 next, to the payment of debts against said estate, if any, and that the remainder, if any, thereof be paid to your oratrix without. For reply to the statement of the alleged statute stated in said amended answer, your oratrix says that it never was valid as against her said marriage and was repealed without a saving clause in A. D. 1872, and before the rendition of the alleged decree in such amended answer stated was rendered, and therefore would not authorize it had it been valid, which it was not, for further reply to such so called adepts, and makes part hereof what is stated in her previous amendment of an alleged to be law in the answer herein of said Amalie and Albert Staehle, deceased, as she does what is stated in such amendment in reply to a pretended decree stated in such amended answer. For reply to the statement that the citizenship of your oratrix' said husband was one of the issues involved in the so called suit in which it is claimed that that said pretended decree was rendered, she says that she believes that he was at the time of their marriage a citizen of the United States and of said state, and that whether he was is immaterial as it cannot affect the validity of their marriage.

345 Your oratrix denies that she personally or otherwise voluntarily submitted to the jurisdiction of the court in said amended answer named as the pretended determination thereof, and states that if she had, as such court had no jurisdiction of the subject matter of such so-called suit, such pretended decree would, nevertheless, be void on such account alone, as well as others herein and in said amendment stated.

Your oratrix states that she does not know whether her said husband ever signed the said so-called instrument of 12th July, A. D. 1876, named in such amended answer, and that if he did, she believes that he did so either unconsciously, on account of the then near approach of his death, and within about three hours thereof, after having been dangerously sick for some eight days, or by undue influence or fraud or duress imposed upon him therefor by said Amalie and Albert Staehle, deceased, Gaup Steiger and Muller, in said bill and amendment named, or has, and some of them, as is stated in her first amendment herein, all of which statements are adopted and made part hereof as so much of a reply to every statement made in said amended answer of or as to such pretended agreement.

346 Your oratrix denies that her said husband ever intended that any person should be benefited by such instrument, or that it was made in any way to accomplish or carry out his intention toward said Amalie, or to enable any one to act for her or in her interest, not admitting that it was ever made or its validity; and states that had it been made for the benefit of said Amalie, which is denied, that, as to her, it would be within the statute of frauds and perjury, and void, because it does not appear in writing that it was made for her benefit or for any purpose so claimed by her, and that in no event could any one derive any benefit from it if valid, which it is not, without paying the purchase money therefor as provided therein.

That, as in the answer of said Amalie and said Albert Staehle, now deceased, herein, it is stated that said Roth, deceased, for a valuable consideration then agreed to be paid to him, transferred to said Staehle all the real estate in said bill described by that instrument, and that it is sufficient to transfer to him the equitable title thereto, and that it was subject to her rights under the post-nuptial agreement in said answer named she is precluded from.

Your oratrix denies that any deed or pretended deeds issued or referred to in such amended answer were made to carry out
347 the general or other intention of her husband, not admitting that any of them were ever made, or that the so-called one from her to said Albert Staehle was executed for the same general or other purpose, for the reason that it was signed without knowing what it was, and was not signed for any such intended purpose of said Amalie or any one, or any intended benefit of any one, nor for carrying out the intention of any one, nor in pursuance of any agreement, nor in any way to complete or finish any one, nor to forever or otherwise settle on said Amalie any claim or right to any property, or pretended claim or right on her behalf or that of any one.

Your oratrix prays that said Wilhelm Roth, Wilhelm Schweitzer and Frederick Henbach may be made defendants to this amendment of her bill and said bill and previous amendment thereto, and that same is an issue against all of said defendants, and that they be required to answer each thereof; that on the happening of the contingencies as hereinbefore stated, or either thereof, that a decree alleging to the contrary, or that it was made for any other purpose or any such purpose as is alleged in her amended answer, without some rights sufficient reasons therefor, which should be most conclusive and satisfactory, on account of the death of said Albert Staehle. Not
348 one willing its validity or that it is the act of said Roth, deceased, not that it, if made, was made subject to such rights for any such purpose, but denying it, be rendered as hereinbefore ordered, and she further prays, as in her said bill and previous amendment she thereto has prayed, and for such other and further relief as to your honor may seem meet.

MADELAINE ROTH.
By C. M. HARRIS, *her Solicitor.*

C. M. HARRIS, *Solicitor for Complainant.*

358 The answer of Amalie Staehle Roth to the bill of complaint, as amended, filed herein.

This defendant, saving and reserving to herself all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill and amendments contained, for answer thereunto says:

That as to the names and the spelling of the same as set out in the last amendment to said bill, she leaves the complainant to prove the same, as she may be advised, and as the same may be material.

She denies that said John George Roth removed to the Kingdom of Wurtemburg for the purpose of taking advantage of the laws of that kingdom in procuring a decree of nullity, as is alleged in said amendments.

She denies an unlawful intimacy with said John George Roth on or since the year 1857, as alleged in said bill, and denies any intimacy with him prior to her marriage at any time.

She also denies the allegation that at the time of the re-
359 turn of said John George Roth from America to the Kingdom of Wurtemburg he intended to abandon said Madelaine, as is alleged in said amendment; and she denies all allegations in said amendments contained with reference to an abandonment of her on the part of said John George Roth.

She also denies the alleged treatment of said Madelaine by said Roth, as is alleged.

She does not know what grade of passage was taken by said Roth and said Madelaine on their return to Europe, whether deck or otherwise, nor what kind of cars they rode after they arrived in Europe, nor what kind of food they used on their journey, but leaves her to prove the same if it be material.

Nor does she know what kind of a boarding house they stopped in the city of Stuttgart, nor when they arrived at the house of Madelaine's father in Strassburg, nor does she know anything about her general appearance, but leaves her to prove the same, as she may be advised.

She denies that John George Roth abandoned her within about eight days after her arrival at her father's house in Strassburg. She
360 does not know how long said Madelaine remained at her father's house, nor how many years' support he furnished her, but alleges that he supported her at all times in a proper manner.

She denies the allegation as to Roth's treatment of said Madelaine after they left Chicago in 1856.

She denies that said Roth refused to live with her from the time she went to her father's house in Strassburg up to the year 1864, but alleges that if they did not live together, which she does not know, that said Madelaine was the cause thereof, and that she lived separate from him at her own desire.

This defendant further admits that said Madelaine went to Chi-

cago in the fall of 1863 for the purpose of commencing a divorce proceeding against said John George Roth; but whether the same was settled between them or not she cannot say, but she alleges that they lived together thereafter for several years as pretended husband and wife.

This defendant does not know what promises the said John George Roth may have made to said Madelaine in order to induce her to refurn with him to Europe.

She denies that from the time of their return in 1864 until 1870 the said Roth treated her in any improper manner, or that
361 he forced her to leave him in the year 1870. She denies all the allegations in the said amendments contained with reference to bad treatment on the part of John George Roth of the said Madelaine.

This defendant also denies the description given by her counsel of herself, Madelaine, in said amendments, but alleges as she, this defendant, has heretofore done, that said Madelaine is a woman of good capacity and understanding, and of good common sense, and has always been of sufficient capacity at all times to understand the nature of her acts, and alleges that she has always been able to make good contracts and to protect her own interests.

And she denies the allegation that said Madelaine was liable to imposition. And she denies that she, or any person on her behalf, ever imposed on said Madaleine, or made any false representations to her, or tried to induce her to do any act contrary to her own wish. And she again alleges that all contracts and transactions had between this defendant and said Madelaine have been with full understanding on the part of Madelaine, and have been done by her freely and voluntarily, and without compulsion or over-persuasion on the part of any person.

That said Madelaine has succeeded in obtaining money
362 from her to which she was not entitled, by her own good management, and which this defendant submitted to in order to have peace, and for the purpose of quieting her, as is alleged in her former answer to said bill, and the amendments thereto.

That said Madelaine fully understands the German language, as it is used in the Kingdom of Wurtemburg, and elsewhere in the German Empire.

She also alleges that she is informed and believes that said Madelaine understands the English language. The defendant, further answering, says that she does not know how to answer the description given by said Madelaine's counsel of her feelings prior to her visit to the house of this defendant, on or about September 26th, 1876, but leaves her to establish her feelings in such manner as she may be advised by her counsel. But this defendant alleges that her acts towards the said Madelaine were disinterested, and she was willing, on the occasion of such visit to her, to treat her kindly, and to do more for her than was required by the law, and that all of

this defendant's acts on such occasion were instigated by friendship and a desire to satisfy the claims and demands of said Madelaine, illegal or unjust the same might be considered.

363 And this defendant, further answering, says that she cannot state what feelings the said Madelaine possessed or had at the time of her visit to this defendant, but she alleges that said Madelaine was not kept at her house for the purpose of having her execute a deed; and she alleges that she had no knowledge that a deed was to be sent her by her brother Albert Staehle, from Chicago, until it arrived, on or about the 30th of September, 1876.

That prior to that time she had no knowledge or information that it was necessary or desirable in any way to have the said Madelaine execute such deed.

But she does allege that said Madelaine fully understood the contract entered into on or about the 26th of September, 1876; and that she advanced her a thousand marks at the time, because demanded by said Madelaine, and that it was not done for the purpose of inducing her to sign the deed, which was afterwards received by her, but that the thousand marks were paid prior to any knowledge on her part that such a deed was to be received, and prior to any knowledge on her part that it was the intention or expectation of her brother to have her execute any such deed.

364 And, further answering, she denies the allegation that said Madelaine supposed that the deed signed and executed by her, on or about the 3d of October, A. D., 1876, was simply an acknowledgment of the instrument beating date September 26th, 1876. But she alleges that the deed so executed by her afterwards, before the United States Consul at Stuttgart was fully explained to her by said consul or his secretary, and that she fully understood the effect and purport of the same, and knew that it was a separate and different instrument from the agreement of September 26th, 1876. And that this defendant Amalie explained to her fully the reason why she desired to have such deed executed, and told her she had just received it from her brother in Chicago, who advised her by letter that her counsel deemed it advisable to have her execute such an instrument, in order to facilitate the sale of the property in Chicago.

This defendant, further answering, denies in any way the right of said Madelaine to call this defendant to account for the personal property left by said Roth at his decease, or for the rents and profits arising out of said real estate described.

365 And further answering, she denies the allegation that said Madelaine is or can be in any way entitled to the purchase money described in said bill of the sale of the 12th of July, 1876.

And further answering, she denies utterly all legal conclusions drawn by the pleader in said amendments.

And utterly denies the allegation that said law of 1808 was not valid and binding, as alleged in said amendments.

Further answering, the defendant denies the allegation made by said Madelaine, that she did not voluntarily or otherwise submit to the jurisdiction of the Royal Matrimonial Court at Ellwangen, in the Kingdom of Wurtemberg.

And she denies also the allegation that said Matrimonial Court did not have jurisdiction over her, or over the subject matter of said suit.

And this defendant denies all allegations in said amendments with reference to the execution of said contract made on the 12th of July, 1876.

And denies all the allegations made therein with reference to the circumstances and surroundings connected with such execution.

366 And further answering, this defendant says that she cannot understand certain portions of said amendments, nor can her counsel, as she is advised, on account of bad writing and faulty construction of sentences. But if there can be anything therein which she has not already answered, she now denies the allegation.

And further answering, she now attaches a translation of the said marriage and inheritance contract to this her answer, which is marked Exhibit 9, and makes it a part hereof, and relies upon the same for a true statement of the contents thereof, and again insists that the same is valid and binding and in full force and operation. And she adopts the former answers made by her to said original bill and the amendments thereto, and makes the same a part hereof, the whole to constitue an answer to said bill and to the amendments thereto.

And having now fully answered, she prays to be hence dismissed, etc.

AMALIE STAEHLE ROTH,
By ROSENTHAL & PENCE,
Her Solicitors.

(ROSENTHAL & PENCE.)

367 Exhibit 9.

Schorndorf. Upper County Court Seat.

(Oberantsstadt.)

Done on March 28, 1874.

Marriage and inheritance contract between George Roth, citizen of the United North American Free States, a private gentleman, and residing at this place since the year 1860, heretofore a widower without children, parents dead, and his third wife, Amalie, daughter of Gottleib Stahle, deceased, former schoolmaster at Winterbach, and of Louise Friedericke, *nee* Widmann, who is still living.

They intermarried on November 27th, 1873, and have to-day, in the presence of the undersigned witnesses, executed the following marriage and inheritance contract by them agreed upon, concerning their property relations during their marriage and the future succession thereof.

I. They contribute to the marriage as follows:

(A.) The husband contributes, besides different pieces of real estate in this place, and besides chattels on hand, several
368 buildings, etc., at Chicago, in America, which last constitutes the principal part of the estate, but which, on account of the condition of affairs, especially existing at psesent in Chicago, do not admit even of an approximate valuation.

(B.) The wife contributes.

Dowry from her mother in cash (by way of advancement) 2,500 florins, which, in due time is to be brought into hotchpot, together with the shares of her brothers and sisters, it being remarked that upon the decease of their father, no partition was made between them.

She also contributes chattels appraised at 1,000 florins, so that the whole contribution by her amounts to 3,500 florins.

II. There shall exist between both husband and wife general community of estate, which shall extend to all the estate of both, that of the present as well as that of the future. Such community relates back to and commences with the legal existence of the present marriage, and is to remain continually valid without being dependent upon the existence of issue. As in consequence of this community both husband and wife have equal claims on said property, so every and all debts shall be considered as common debts, whether they be known or unknown, whether created prior
369 or during the existence of such community of estate.

To the husband, however, belongs the right of control of the entire property, and accordingly he has also the privilege, legally, to dispose of or mortgage the same without interference on the part of the wife. The education and marriage portion of the children is to be at the common expense.

III. Should, during the lifetime of husband and wife, a divorce or decree of nullity of the marriage, or a continuous separation take place, then the wife is to receive back her contribution, and all property that during the marriage has fallen to her by inheritance or other like title, while all the remaining property is to remain the husband's. To the innocent party, however, the right to sue the guilty party for any deficit of property is reserved.

In such case the chattels brought into the marriage by the wife, and still existing, are to be appraised in the orphans' court, and the deficit is to be made good to her.

IV. If the marriage is terminated by the death of either husband or wife and children of such marriage are existing, the community of estate is to be uninterruptedly continued by the survivor with

the children until his or her death or remarriage. At the
370 same time, however, all property, which during this time (namely, after the death of either party) falls individually to such survivor, or to the children by inheritance, or by other like title, is not to flow into the community of estate, but is to remain the property of such party to whom it falls.

V. Upon the death of the survivor the whole estate is to be divided among the children according to the Wurtemburg law of intestacy, as the estate of both parents. But the survivor shall retain the power to dispose of the half constituting his share, in any legal way subject only to the legitimate portion to which the children are entitled.

VI. The contracting of a new marriage by the survivor shall, however, terminate the continuance of the community of estate. Therefore, partition will have to be made before such marriage by which one-half of the common estate shall remain the property of the survivor, and the other half shall constitute the estate of the deceased. The latter half the survivor and the children inherit in accordance with the provisions of the Wurtemburg law.

VII. In case the partition shall take place between the survivor and the children in pursuance of the foregoing provision, then
371 the survivor shall retain the existing real property and chattels at the valuation of the orphans' court, while the property falling to the children shall be legally secured upon the real property, and therefore a partition in kind according to the royal order of May 21, 1825, § 35 is not to take effect.

VIII. In regard to the rights of management and usufruct, by the parents, of the property of the children, the Wurtemburg law is to apply as also in regard to the liabilities of the parents arising therefrom.

IX. Should, however, husband or wife die childless, or the children born during the marriage die before him or her, then the community of estate shall cease, and the entire estate until then held in common, falls to the survivor as his sole property, excluding all claims of inheritance by the relatives of the ascending line as well as by collateral relatives of the deceased.

The survivor, however, shall within a year from the day of death of the other, pay to the relatives of the deceased, without interest and without giving security, a so-called reversionary interest, to wit:

(A) The husband, in case of the prior decease of his wife, shall pay to those relatives who would have inherited (excluding
372 the husband, however,) the entire contribution of his wife, to wit: 3,500 florins, and also the full amount of that which she may acquire by inheritance during marriage.

As to the chattels, the same disposition shall be made as in case of a separation by divorce and as fixed in paragraph III.

(B) The wife, in case of the prior decease of her husband shall pay to his relatives hereinfter named, together the sum of 80,000 florins to be divided among them, per stripes, namely:

1st. Among the four children of his deceased brother, Gottleib Roth, viz:

A. Jacob,
B. Gottleib, } *In America.*
C. Georg,

D. Fredericke, deserted wife of Caspar Eliman, of Bentelsbach.

2d. Among the two children of his deceased brother, Johannes Roth, formerly a vintner in Bentelsbach, named A. Johannes Roth, of Bentelsbach, B. Christian, of the same place. 3d. Among the three children of his deceased brother, Jacob Rother, formerly a vintner of Bentelsbach, named, A. Jacob Roth, at Bentelsbach. B. William Roth, of the same place. C. The only child (name not known) of the deceased Fredericke, late wife of the still living vintner, Hen-
373 bach, of the same place.

Should any one of these persons die before the husband, then the descendants of such person shall take his place, and should none such exist, then his nearest relatives in the same stirpes.

The husband, Roth, however, distinctly reserves to himself the right to make any changes whatever relating to the 80,000 florins herewith provided as above for his relatives.

X. The condition of the property shall affect the payment of such so-called reversionary interest so far only that the survivor is to receive at any rate as much property for himself or herself in addition to what is exempt by law, as such reversionary interest for the relatives of the deceased amounts to.

Should the property on hand be insufficient to satisfy both claims then the deficit is to be borne one-half thereof by the survivor and the other half by the relatives. At the same time the mother of the wife renounces all her other claims of inheritance, and particularly her statutory portion of the estate, she accepting in lieu thereof her reversionary share as above mentioned.

374 XI. Should it happen as provided for in paragraph X, namely: should the property on hand be insufficient to satisfy the claims of the wife and relatives, and should a deficit exist, then the wife shall at the appraised value of 20,000 florins, receive the following from the property on hand, to wit:

A. The hereinafter described real property in the town of Schorndorf, 28.4 rods, a two-story dwelling house, the lower story of stone, situated outside of the old upper gate, and adjoining the garden and the street. (Real Estate Record Book, page 2–33, No. 351.) 11.7 rods, a two-story building, with stable for horses, servants' chambers, coach house, laundry and bath-room in rear of the dwelling.

22.5 rods as a yard.
5.7 " " "
1⅝ M, 7.0 rods, woodland.
¼ M, 32.8 rods, vegetable garden.
¼ M, 1.5, orchard park.
3.1 rods, privy.

$2\frac{1}{8}$ M, 44.8 rods at the upper gate, along side the road, on both sides. (Record of property, Pt. 15, page 62. Parcel No. 15.) $\frac{1}{2}$ M, 15.0 rods, vegetable garden adjoining the house, upon the former rampart in front of the upper gate, the street being in front; Mr. Leoble, veterinary surgeon, being in the rear. (Parcel
375 No. 4, 971.)

(B.) All chattels on hand, with the sole exception of cash money.

The undersigned acknowledged the foregoing marriage and inheritance contract, requesting that the same be confirmed by the partition authority, and that the highest revenue duty be assessed, as a valuation of the property is impossible.

The husband, John George Roth. — The wife, Amalie Roth.

Mother of the wife, Louise Stahle.

Witnesses for

The husband, ——— Fuchs, Christophe Wilcke, Gotthilf Steiger.

The wife, Gottleib Junginger, Caspar Junginger, Court Notary Loescher.

15.

Schorndorf.

Done on April 1st, 1874,

before

The Royal Notarial and Orphans' Court.

Present:

Court Notary Gaup

and

Mayor of city, Frosch,

Alderman, Aldinger,

Judges of the Orphans' Court.

The foregoing marriage and inheritance contract privately
376 entered into between George Roth, private gentleman of Schorndorf, and his wife, Amalie, *nee* Staehle, after the term of three months, required by law, had elapsed on February 24, 1874, which term, however, upon the petition of the interested parties, was extended by decree of the partition authorities of Schorndorf, from the 24th of February, of this year, to the 10th of April of this year, inclusive, was presented on March 28, 1874, to the inventory authorities, with the request praying that the same be confirmed, and as the value of the marriage contribution of the husband is expressed, that the highest revenue duty be assessed, for the purpose of confirming this contract this day was fixed upon, and the Roths were summoned hereunto, both of whom appeared in person.

The ensuing examination of the contract as to its form, met with no objection, excepting that the value of the marriage contribution of the husband, though only approximately, was to be given, because the law concerning notarial fees.

379 Your oratrix, said Madalaine Roth, for amendment to her bill herein, on leave of the court obtained therefor, states that she withdraws all allegations in said bill and amendments herein, stating that she signed a blank paper, over which she believed that the so-called agreement of the 26th day of September, A. D. 1876, was on there, and all like statements, and that they were made under misapprehension, forgetfulness, or a delusion consequent upon the
380 abnormal condition of her mind when she made them, and on the 26th of September, 1876, and when she signed it, and upon the matters stated in her bill and amendments, and herein.

And alleges, instead thereof, that she signed such agreement, and that it is void and voidable as against her, on account of other matters appearing in said bill and amendments and herein, others than those so withdrawn.

That Louis Muller, in said bill named, and said Amalie, though aware that your oratrix, as the widow of John George Roth, deceased, in said bill named, was entitled to an interest in his estate, for the purpose of inducing her to sign such agreement of the 26th September, A. D. 1876, and such others as they, or either of them, might desire that she should, for the benefit of said Amalie, not only fraudulently and falsely represented, acted and did to her as in said bill and amendments stated, but for such purpose fraudulently withheld from her the knowledge that, as the widow of said Roth, deceased, she was entitled to a large portion of his estate, and also the information that he had left any estate, and all facts showing either, and that each of them, for such purpose, before she signed
381 said so-called agreement of the 26th of September, 1876, and for the purpose of inducing her to sign it and such other instruments as they might desire her to sign for the use and benefit of said Amalie, falsely and fraudulently represented to her that she had no rights to claim anything from the estate of said Roth, deceased, and that he left no estate, all which each of them knew when made to be false, but which your oratrix believed and relied upon, and which, with other representations made to her for such purpose, so believed and relied upon by her, and known to be false by those by whom made when made, and other matters appearing in said bill and amendments, induced her to make and sign such agreement, and the so-called deed dated September the 11th, A. D. 1876, which she did, believing it to be such agreement.

That such deed, dated the 11th day of September, A. D. 1876, was not signed until the 3d day of October thereafter, and was never acknowledged before Potter, the official whom the acknowledgment purports to have been made, nor before any one authorized to take such acknowledgment, and having been obtained fraudulently and without consideration, as in such amendments and herein stated, the want of an acknowledgment cannot be supplied in any way.

That it is stated in the second, which is the last of such

382 amendments, that your oratrix expected to have returned home on the morning after having gone to said Amalie's house. Wherefore your oratrix alleges to be taken and regarded instead thereof the following, which is that she did not intend to return until after she had seen the grave of her said deceased husband, and that she intended and expected to have, on the day after she went to said Amalie's house, and as she believes would have had she not been taken to said house the night before by said Muller, for the purpose in said amendments stated; that until after the third day of October, A. D. 1876, she was in the coddition subject to and governed by influences, and ignorant, uninformed, unadvised, and without information or knowledge, as is in said bill and amendments and herein stated that she was, and did not know the contents or force or effect of any of the so-called agreements or deed signed by her, and described in said bill or any of said amendments or herein, nor what a deed was, nor its force nor effect, nor the laws of the State of Illinois nor the Kingdom of Wurtemburg, governing rights of married women or the descent of property.

And that she before, and when she signed such agreements and deed, and until after such time believed and relied upon all the statements alleged in said bill and amendments and herein
383 to have been made to her, and that said Muller and Steiger, in said bill named, had ever been her confidential and reliable friends, and had acted for her interest in the premises, and that said Amalie had become one on the 26th day of September, A. D. 1876, a true friend of hers, and had acted for her interest in the premises, and that the professions, acts and treatment of all herein said bill and amendment, and herein alleged to have been to and of her were sincere and for her interest, but that she has since became aware that all thereof was for the fraudulent purpose in said bill and amendments, and herein stated, and so charge.

Your oratrix believes that the time her said husband made to her in Chicago, Illinois, the promises in her last amendment herein stated, if she would go and live with him at Schorndorf, in the Kingdom of Wurtemburg, he never intended that she should live with him any longer than he could well avoid, and that he took her there to consummate the purpose charged in such amendment, hoping thereby to discard her and deprive her of any interest in his property without any allowance or means of support, and that such promises were made for such purpose only, and so charges.

Your oratrix prays, as in her bill and amendments thereto,
384 she has prayed.

MADALAINE ROTH,
By C. M. HARRIS, *her Sol.*

C. M. HARRIS,
Sol. for Comp't.

The answer of Amalie Staehle Roth, one of the above defendants to the bill as amended by the amendmends filed by said complainants on June 18th, 1881.

For answer thereto, this defendant, saving and reserving all manner of benefit and advantage of exception thereto, says that she denies all the allegations in said amendments contained, and hereby adopts the former answer by her made to the said bill as amended and prays the same benefit as if here again repeated, and having now fully answered, she prays, etc.

AMALIE STAEHLE ROTH.

DECREE.

612 And now on this day comes on this cause to be heard before the Hon. John A. Jameson, judge of said court, upon the bill of complaint and all amendments thereto, filed herein, and the supplement to said bill, and upon the answers of all the defendants thereto and upon the replication to all said answers.

And also upon the cross-bill of complaint and all amendments thereto, filed herein by said Jacob Roth, John George Roth, and Gottleib Roth, children of Gottleib Roth, deceased, and Christian Roth, and upon the answers thereto of all the defendants to said cross-bill, and upon replication to all said answers.

And also upon the cross-bill of complaint filed herein by Amalie Staehle Roth, and upon the answers thereto of all the de-
61 ; fendants to said cross-bill and upon replication to all said answers:

And also upon the cross-bill of complaint filed herein by Fredericke Ehman, William Roth and Karolina Roth, his wife, Jacob Roth, Marie Roth, his wife, Fredericke Schweitzer, and William Schweitzer, Johannes Roth and Christina Roth, his wife, and Frederick Henback, and upon answers thereto of all the defendants to said cross-bill, and upon replication to said answers and upon all the pleadings in said csuse.

And also upon the depositions, proofs and exhibits filed hereinand also upon evidence taken, heard and read in open court:

And it appearing to the court from all the foregoing the court finds:

First. That on the 27th day of November, 1873, said John George Roth, now deceased, lawfully intermarried with Amalie Staehle, in the Kingdom of Wurtemburg, and that at the time of said marriage both were unmarried persons and both had the legal right to enter into such marriage in the Kingdom of Wurtemburg, in which kingdom both at that time were domiciled, and in which kingdom they continued their domicile up to the time of the death of said John George Roth, hereinafter mentioned. That such marriage so entered into was legal, valid and binding, and operated as such in the State of Illinois.

Second. That on March 28th, 1874, said John George Roth, now deceased, was the owner in fee of the following described premises, viz.:

614 Lots 13 and 16, in the assessor's division of lots 4 and 5, in block 34, in the original town of Chicago.

Also lot 11 of the assessor's division of lots 7 and 8, in block 54, in the original town of Chicago.

Also the west half of lot 3, in block 50, in the school section addition to Chicago.

Also lots 1 to 46, inclusive, in John George Roth's subdivision of block 17 of the assessor's division of the north one-fourth of the southeast quarter of section 20, town 39, north of range 14, east of the 3rd principal meridian.

That all of said premises are situated in the county of Cook, and State of Illinois.

Third. That being the owner, and so seized in fee of the above described premises, he, the said John George Roth, entered into a post nuptial or marriage and inheritance contract with his said wife Amalie Staehle Roth, which was duly executed in accordance with the laws of the Kingdom of Wurtemburg, where both he and his said wife resided and were domiciled.

That said marriage and inheritance contract became operative, valid and binding between the said Roth and his said wife, in accordance with the terms thereof; that the same was for a valuable consideration, moving from the one to the other. That in and by said marriage and inheritance contract it was provided, that if he, the said John George Roth, should die childless, prior to the decease of his said wife, then in such case the above described
615 premises should fall to his said wife, and be vested in her, and that none of his relations or heirs-at-law should have any claim of inheritance in or to any portion of said premises.

It was also provided in and by said contract, that in case of the death of said John George Roth, prior to the decease of his said wife, that she, the said Amalie Staehle Roth, should, within a year from the day of his death, pay to the relatives of the deceased, without interest, and without giving security, the following sums of money, viz:

That she should pay to his relatives hereinafter named together, the sum of 80,000 florins, to be divided among them per stirpes, viz:

That she should pay to Jacob Roth, Gottleib Roth, George Roth, (known as John George Roth, and also known as Johann George Roth), and to Fredericke Ehman, wife of Casper Ehman, (they being the children of Gottleib Roth, a deceased brother of said John George Roth, deceased), the one-third part of said sum of 80,000 florins, share and share alike.

That she also pay to Johannes Roth and Christian Roth, children of Johannes Roth, a deceased brother of said John George Roth,

deceased, the one-third part of said sum of 80,000 florins, share and share alike.

That she should pay to Jacob Roth, William Roth and Frederick Henback (son of Frederick Henback, then deceased), the one-third part of said sum of 80,000 florins, share and share alike, the said Jacob Roth, William Roth and Frederick Henback, son of Frederick Henback, deceased, being the children, as is therein recited,
616 of Jacob Roth, deceased, who was a brother of said John Roth, deceased.

It was also provided in and by said marriage and inheritance contract that the said Amalie Staehle Roth, wife of said John George Roth, should receive at least one-half of all the estate of said John George Roth, deceased, and in case one half of the estate so left by him should be insufficient to pay the sum of 80,000 florins to the relatives above described, that then such deficit should be borne equally, one-half by his said Amalie Staehle Roth, and the other half by the relatives above described.

That said Frederick Henback is still a minor, and that Johannes Dippon is his legal guardian.

That said premises above described were never parted with or conveyed by said John Roth in his lifetime, except by the marriage and inheritance contract, above set out.

Fourth. That on the 12th of July, 1876, said John George Roth, died intestate in the Kingdom of Wurtemburg, and without having willed, devised, transferred or conveyed said premises, except as was done by him in said marriage and inheritance contract.

That said John George Roth, left surviving him his widow the said Amalie Staehle Roth, but that he left surviving no child nor descendant of any deceased child.

That he left surviving him neither father, mother, brother or sister, but that he left surviving him the following named children and descendants of children of three deceased brothers, viz: Jacob Roth, George Roth, also known as Johann George Roth, and also known as John George Roth, Gottlieb Roth, and Fredericke
617 Ehman, wife of Casper Ehman, four children of Gottlieb Roth, deceased, brother of said John George Roth, deceased, he the said Gottlieb Roth, the brother having died long prior to the death of said John George Roth.

That he left him surviving William Roth, Jacob Roth, and Fredericke Schweitzer, wife of William Schweitzer, three children of Jacob Roth, deceased, a brother of the said John George Roth, he, the said Jacob Roth, brother of said John George Roth, deceased, having died long prior to the decease of said John George Roth, deceased.

That he left him also surviving Christian Roth, Johannes Roth, and Frederick Henback, only child of Fredericke Henback, wife of Wilhelm Henback. That said Wilhelm Henback, husband of said Fredericke Henbach, is now deceased. That said Christian Roth,

Johannes Roth, and Fredericke Henback, were the only children of Johannes Roth, deceased, a brother of said John George Roth, deceased, and that said Johannes Roth, brother of said John George Roth, deceased, died long prior to the decease of said John George Roth, deceased.

That said John George Roth, deceased, left no brother or sister him surviving, and he left no other child nor descendant of a deceased child of said Gottlieb Roth, deceased, Jacob Roth, deceased, or Johannes Roth, deceased, only brothers of said John George Roth, deceased. And that said John George Roth, left no other brother or sister or descendant of any deceased brother or sister him surviving.

618 *Fifth.* That by virtue of the marriage between said John George Roth and said Amalie Staehle Roth, now the widow of said John George Roth, deceased, and by virtue of the said marriage and inheritance contract described, and by reason of the death of said John George Roth, childless as above set out, she, the said Amalie Staehle Roth, became seized in fee of the legal and equitable estate and title of one undivided one-half of the premises above described, and became seized in fee of the equitable estate and title of the other undivided one-half of the premises above described.

That the naked legal title of one undivided half of said premises, by reason of the death of said John George Roth, became vested in the descendants of his three deceased brothers above described, in trust for said Amalie Staehle Roth.

Sixth. That after the decease of said John George Roth, the said Amalie Staehle Roth constituted her brother, Albert Staehle, her agent and attorney in fact, to sell and dispose of the said premises above described, and that afterwards said Amalie Staehle Roth directed the several persons hereinafter named to convey unto said Albert Staehle all their interest in said premises, and that by deed bearing date October 31st, 1876, the said Jacob Roth, son of Gottlieb Roth, deceased, conveyed all his interest in said premises unto said Albert Staehle. That said deed was duly executed, acknowledged and delivered by said Jacob Roth, and was filed for record in the recorder's office of Cook county, Illinois, on May 1st, 1877.

619 That said Jacob Roth, at the time of the execution and delivery of said deed, had no wife; that, by deed of the same date, said Gottlieb Roth, son of Gottlieb Roth, deceased, together with his wife, Fredericke W. E. Roth, executed and delivered unto said Albert Staehle a deed of conveyance of all said premises, which said deed was duly executed and acknowledged and delivered and was filed for record in the recorder's office of Cook county, Illinois, on May 1st, 1877.

That by deed bearing date December 20th, 1876, said John George Roth, sometimes called Johann George Roth, and described in said marriage and inheritance contract simply by the name of George Roth, who was the son of Gottlieb Roth, deceased, con-

veyed all his right, title and interest in said premises unto said Albert Staehle, which said deed was duly executed, acknowledged and delivered, and was filed for record in the recorder's offiee of Cook county, Illinois, on December 21st, 1876.

That said John George Roth, at the time of the execution and delivery of said instrument last mentioned, had no wife. That said Jacob Roth, Gottlieb Roth, and John George Roth, at the time of the execution of the deeds aforesaid, resided in the city of Chicago and State of Illinois.

That by deed bearing date June 29th, 1877, said Fredericke Ehman, daughter of said Gottleib Roth, deceased, and Casper Ehman, her husband, and Fredericke Schweitzer, daughter of said Jacob Roth, deceased, and Wilhelm Schweitzer, her husband, conveyed all their right, title and interest, if any they possessed, in and to said premises unto said Albert Staehle, which said deed was duly
620 executed and acknowledged and delivered, and was filed for record in the recorder's office of Cook county, Illinois, October 24th, 1877.

That by deed bearing date June 29th, 1877, said Johannes Roth, son of Johannes Roth, deceased, and Christina Roth, his wife, and Jacob Roth, son of Jacob Roth, deceased, and Marie Roth, his wife, and Wilhelm or William Roth, son of Jacob Roth, deceased, and Karolina Roth, his wife, conveyed all their right, title and interest, if any they possessed, in and to said premises unto said Albert Staehle, which said deed of conveyance was duly executed and acknowledged and delivered by all said parties, and was filed for record in the Recorder's office of Cook county, Illinois, on October 24th, 1877.

That the conveyances aforesaid so made by the descendants of said three deceased brothers of said John George Roth, deceased, were for a valuable consideration, and released and relinquished unto said Albert Staehle all the right, title and interest, claim or demand which they, or any of them, had in or to said premises, or any portion thereof, and also relinquished all right, or pretended right or claim or dower, on the part of any of the wives of said parties. That such conveyances were made unto said Albert Staehle, as the agent and attorney in fact of said Amalie Staehie Roth, and such interests so conveyed by them were held by him in trust for said Amalie Staehle Roth.

That since the execution of the deeds aforesaid by said Fredericke Ehman, Fredericke Schweitzer, William Roth, Jacob Roth and Johannes Roth they have further ratified and confirmed the same, and since the pendency of this suit have relinquished,
621 surrendered and abandoned all claims of any and every description in or to any portion of said premises, and have also executed and delivered unto said Amalie Staehle Roth a confirmatory deed of conveyance, and have received their full share of the provisions made for them in said marriage and inheritence contract.

The said Frederick Henback, child of said Frederick Henback, who is a minor, resides in the Kingdom of Wurtemburg, and that his legally constituted guardian in said kingdom, Johannes Dippon, has received and receipted for the portion provided for said minor, Frederick Henback, in said marriage and inheritance contract.

That on the 8th day of September, 1877, said Amalie Staehle Roth made, executed and delivered unto her brother, Albert Staehle, a uuit-claim deed of all the premises above described, which said deed was filed for record in the recorder's office of Cook county, Illinois, on October 24th, 1877.

That said conveyances above set out were so made to the said Albert Staehle for the purpose of enabling him, as the agent and attorney in fact of said Amalie Staehle Roth, to sell and convey said premises in order to carry into effect the said marriage and inheritence contract, and to make distribution in accordance with the terms thereof. That Albert Staehle had no interest whatever in said premises other than as the agent of said Amalie Staehle Roth, and that he held the same in trust for her.

That on or about the day of , 1878, said Albert Staehle departed this life intestate, leaving him surviving
622 Mathilda Staehle, his widow, and the following children, viz: Albert Staehle, Emma Staehle, Julia Staehle, Mathilde Staehle, Eugene Staehle and Alfred Staehle, and none others, and that he left surviving him no descendant of any deceased child.

That by reason of the death of said Albert Staehle, the naked legal title to that portion of said premises so vested in him, thereupon vested in said children and heirs at law of said Albert Staehle, deceased, and that after the death of their said father, they continued to hold said premises in trust for said Amalie Staehle Roth.

That by deed, bearing date June 25th, 1880, said Mathilde Staehle, widow of said Albert Staehle, deceased, and said Emma Staehle and Julia Staehle, for a valuable consideration, conveyed and released unto said Amalie Staehle Roth, all their right, title and interest in and to said premises, which said deed was filed for record in the recorder's office of Cook county, Illinois, on September 10th, 1880. That the same was duly executed, acknowledged and delivered.

That by deed, bearing date the 4th day of September, 1880, said Albert Staehle, son of said Albert Staehle, deceased, for a valuable consideration, conveyed and released unto said Amalie Staehle Roth, all his right, title and interest in and to said premises.

That said Albert Staehle, son of Albert Staehle, deceased, was more than twenty-one years of age, at the time of the execution and delivery of the deed last above mentioned, and was un-
623 married. That said Emma Staehle and Julia Staehle, were more than eigteen years of age, at the time of the execution and delivery of the said instrumbent by them to said Amalie Staehle Roth, and were both then unmarried.

The said Mathilde Staehle, daughter of said Albert Staehle, deceased, and said Eugene Staehle and Alfred Staehle, are all minors. That said three children last mentioned have no equitable interest in said premises, but they hold the bare and naked legal title to that portion of said premises so vested in them, for the benefit and use of said Amalie Staehle Roth. That they have no equitable interest whatever in or to any portion of said premises.

That all the heirs at law of said John George Roth, deceased, except said Christian Roth, have conveyed and released all their right, title and interest in and to said premises, and have accepted the provisions made for them under said marriage and inheritance contract, and are estopped by said marriage and inheritance and also by said deeds of conveyance and by their acts aforesaid, from asserting any interest in or to any portion of said premises.

That said Christian Roth, is estopped by said marriage and inheritance contract and by his acts ratifying the same from asserting any interest in or to said premises.

Seventh. That all the said heirs at law and relations of said John George Roth, mentioned in said marriage and inheritance contract, have been paid in full the provisions made for them in said marriage and inheritance contract, except said Christian Roth, Jacob Roth, John George Roth and Gottlieb Roth, complainants in said
624 cross-bill.

That there is still due to said Christian Roth the sum of $1,677.68, from said Amalie Staehle Roth, which when paid will be his full share of the provision made for him in said marriage and inheritance contract. And that there is still due to said Jacob Roth, son of said Gottlieb Roth, deceased, the sum of $638.55, which when paid will be his full share of the provision made for him in said marriage and inheritance contract; and that there is still due to said John George Roth, son of Gottleib Roth, deceased, the sum of $2,569.02, which when paid will be his full share of the provision made for him in said marriage and inheritance contract; and there is still due to said Gottlieb Roth the sum of $1,297.45, which when paid will be his full share of the provision made for him in said marriage and inheritance contract, with interest.

Eighth. That said Madelaine Roth, complainant in said original bill, is not the widow of John George Roth, deceased, and that she has no interest whatever in the premises aforesaid.

That on the 9th day of September, A. D. 1873, said Madelaine Roth claimed certain interest in the property of said John George Roth, and on that day she and the said John George Roth entered into a certain contract, compromise settlement and agreement, wherein and whereby, for the consideration of $8,000 paid to her by said John George Roth, she settled and compromised with him all claims of every description in and to the premises in question, and then and there, for the consideration aforesaid, re-

nounced and released all claims of every description in and to
625 said premises; that after the death of said John George Roth she, said Madelaine, again pretended to have some interest or claim in and to the estate of said John George Roth, deceased, and then and there, on said 26th day of September, A. D. 1876, for a valuable consideration made and entered into a certain contract and agreement with said Amalie Staehle Roth, wherein and whereby she settled, renounced and released all and every claim that she had or might be entitled to, according to the laws of the State of Illinois, to the premises in question, and she did then and there compromise and settle the same and forever renounced all such claims or pretended claims unto the said Amalie Staehle Roth. That afterwards, in pursuance of such settlement and renunciation, she, the said Madelaine Roth, did on the 3d day of October, 1876, execute and deliver unto said Amalie Staehle Roth a deed of conveyance to the premises in question running to said Albert Staehle, for the use of said Amalie Staehle Roth, wherein and whereby she conveyed all her right, title, interest, claim and demand of every description in and to the same, unto said Albert Staehle, for the use aforesaid, which said deed of conveyance bears date September 11th, 1876, and was filed for record in the recorder's office of Cook county, Illinois, on the 7th day of November, 1876.

That by virtue of the foregoing instruments so executed by said Madelaine Roth, she is now estopped from asserting any interest in or to said premises.

That said Madelaine Roth has no interest whatever in or to any portion of said premises, nor did she have any interest
626 therein at the time of the execution of said first instrument on September 9th, 1873.

Ninth. That said Amalie Staehle Roth is entitled to the possession of said premises, and to have her title confirmed in her in fee, and to a conveyance of whatever estate, legal or equitable, there is or may be vested in the said Frederick Henback, and in the said Christian Roth, and in the said Mathilde Staehle, daughter of Alfred Staehle, deceased, and in said Eugene Staehle and Alfred Staehle, and that none of the other parties hereto beside the said Amalie Staehle Roth, have any interest, right, title or estate of any description in or to any portion of said premises.

The court finds that neither said Jacob Roth, John George Roth, Gottlieb Roth or Christian Roth have any lien upon said premises for the amount so due them under said marriage and inheritance contract, but that the same is only a personal obligation against said Amalie Staehle Roth, and she, the said Amalie Staehle Roth, consents now, here, to pay such sums so found due.

That by virtue of said contract of September 26th, 1876, she, the said Madelaine Roth, holds a personal obligation against said Amalie Staehle Roth for the sum of nine thousand marks, with interest thereon at the rate of five per cent. per annum, from July 1st, 1877,

and that the amount due thereon in United States money, with interest to date, is the sum of $2,569.45. That said Amalie Staehle Roth now here offers to pay the same, and consents upon application of said Madelaine at any time hereafter to have judgment entered against her herein for said amount with interest upon demand, and refusal on her part to pay same, and she also con-
627 sents to pay the several sums so found due to said Christian, Jacob, John George, and Gottlieb Roth, respectively, and upon like demand and refusal on her part to pay same they may each respectively have judgment against her herein for said respective sums so found due to each with interest.

That the court has jurisdiction of all the parties hereto and of the subject matter hereof, and the court being now fully advised in the premises upon motion of Rosenthal & Pence, solicitors for said Amalie Staehle Roth and others, Charles M. Harris, solicitor for the said Madelaine Roth, and for said Jacob Roth, John George Roth, Gottlieb Roth and Christian Roth, complainants in the cross-bill filed herein by them being present, and Butz, Eschenburg & Prussing, solicitors for Frederick Ehman, William Roth, Karolina Roth, Jacob Roth, son of Jacob Roth, deceased, Marie Roth, Frederick Schweitzer, William Schweitzer, Johannes Roth, Christiana Roth, being present, and J. William Eschenburg, the next friend and guardian ad litem of said Frederick Henback, and William Coffeen, guardian ad litem of said Mathilde Staehle and of said Eugene and Alfred Staehle, minors, being also present in court, it is ordered, adjudged and decreed by the court that all the exceptions filed to answers herein and the decision of which by stipulation was postponed to the final hearing are hereby overruled, and it is ordered, adjudged and decreed by the court that the bill of complaint so filed by said Madelaine Roth in this cause be and the same is hereby dismissed, for want of equity.

And it is also further ordered, adjudged and decreed by the court that the cross-bill of said Jacob Roth, son of said Gottlieb
628 Roth, deceased, John George Roth, Gottlieb Roth, and Christian Roth, filed herein by them be and the same is hereby dismissed for want of equity.

And it is further ordered, adjudged and decreed by court that the cross-bill filed herein by said Frederick Ehman, William Roth, Karolina Roth, Jacob Roth, Marie Roth, Frederick Schweitzer, William Schweitzer, Johanna Roth, Christian Roth and Frederick Henback, be and the same is hereby dismissed for want of equity, and it is further ordered, adjudged and decreed by the court that within twenty days from this date he the said Christian Roth, do execute, acknowledge and deliver unto said Amalie Staehle Roth, or to her solicitors or agents for, her a deed of conveyance, transferring and conveying all his right, title and interest in and to said premises above described unto said Amalie Staehle Roth, and that currently with such delivery, she the said Amalie Staehle Roth, pay unto him

the said Christian Roth, or to his solicitors for him, the sum of $1,677.68, the balance due to him under said marriage and inheritance contract aforesaid, or in default of the execution and delivery of such deed by said Christian Roth, to said Amalie Staehle Roth, within the period aforesaid, it is ordered that Benjamin D. Magruder, master in chancery of this court execute and deliver such deed unto said Amalie Staehle Roth, conveying and transferring to her all the right, title and interest of said Christian Roth, in and to said premises, but that before the delivery of such deed by said Master in Chancery, it is ordered that said Amalie Staehle Roth, do pay unto this court, for the use of said Christian Roth, the said
629 sum of $1,677.68, which said deed when so executed by said Christian Roth or by the said Master in Chancery shall operate as a conveyance of all the right, title and interest of said Christian Roth, in and to said premises unto her, the said Amalie Staehle Roth, and shall be a complete bar both at law and in equity of all the right, title and interest of said Christian Roth, his heirs and assigns, in and to said premises.

And it is further ordered, adjudged and decreed that said Benjamin D. Magruder, Master in Chancery aforesaid, do within 20 days from this day execute and deliver unto the said Amalie Staehle Roth, a deed of conveyance transferring to her all the right, title and interest of the said Frederick Henback, Mathilde Staehle, daughter of Albert Staehle, deceased, Eugene Staehle and Alfred Staehle, in and to said premises unto her said Amalie Staehle Roth, which said deed of conveyance when so executed and delivered shall vest in her, the said Amalie Staehle Roth, all the right, title and interest, claim and demand of every description of the said Frederick Henback, Mathilde Staehle, Eugene Staehle, and Alfred Staehle, in and to said premises which deed shall be a complete bar against them to any claim on their part in or to said premises.

And it is ordered, adjudged and decreed by the court that the said Amalie Staehle Roth, within 20 days from this day pay unto said Jacob Roth, John George Roth, and Gottlieb Roth, the sum found due to them respectively as herein before stated and in case they refuse to accept the same then that she pay the same into this court for their use and benefit, which when so paid will be
630 a complete bar to any and all further claim or claims on their part against her, the said Amalie Staehle Roth, under the said marriage and inheritance contract, and in case of refusal of said Amalie Staehle Roth, upon demand, to pay said sum or sums so found to said Christian, Jacob, John George, and Gottlieb Roth, respectively, then upon application he or they respectively shall have judgment against her herein for the amount so found due to each with interest.

That all the deeds of conveyance heretofore made, executed and delivered by the heirs at law of said John George Roth, deceased, hereinabove set out, are hereby ratified and confirmed, and are de-

clared effectual and operative as deeds of conveyance and are a complete bar against the parties so executing the same.

And it is further ordered, adjudged and decreed that said John Gunzehauser, a receiver appointed by the order of this court, do pay over unto said Amalie Staehle Roth, all moneys remaining in his hands as such receiver, and upon presentation of a receipt from her, or from her agents or solicitors, that he, the said Gunzenhauser, be discharged by this court as such receiver.

And the said Frederick Ehman, William Roth, Karoline Roth, Jacob Roth, Marie Roth, Frederick Schweitzer, William Schweitzer, Johannes Roth and Christian Roth, by Butz, Eschenburg & Prussing, their solicitors now here, waive all errors, and consent to this decree.

It is further ordered, that upon the payment of the several
631 sum or sums of money into court, as above provided, or upon payment thereof with party or parties personally, or to their solicitors, and the production of the receipts or acquaintance of such party or his solicitor, the clerk of this court shall discharge the same, and enter such satisfaction or discharge of record.

And it is further ordered that said Madelaine pay one-half of all the taxable costs legally incurred by said Amalie Staehle Roth, in this cause, and that said Jacob Roth, son of Gottlieb Roth, John George Roth, Gottlieb Roth, Christian Roth, Jacob Roth, son of Jacob Roth, deceased, Wilhelm Roth, Johannes Roth, Frederick Schweitzer, Frederick Ehman and J. William Eschenburg, next friend of Frederick Henback, pay the other half of all said costs, share and share alike.

That all said costs be so taxed, and that said Amalie Staehle Roth have judgment and execution therefor, except the portion so ordered to be paid by said Johannes Roth, Wilhelm Roth, son of Jacob Roth, deceased, Frederick Ehman, Fredericke Schweitzer and J. William Eschenburg, which said Amalie here in open court releases and declares satisfied, and judgment therefore is waived; and Madelaine Roth, the complainant in the original bill of complaint in this cause, having entered her exceptions herein, prays an appeal from the decree of this court to the Supreme court of this state, which is allowed to her on filing herein, within thirty days from this date, an appeal bond in the penal sum of two thousand dollars, with surety thereon, to be approved by the clerk of this court, and also her certificate of evidence in this cause; and leave is hereby given said complainant to file herein a bill of exceptions within thirty days from this date.

632 And Jacob Roth, son of Gottlieb Roth, deceased, John George Roth, Gottlieb Roth and Christian Roth, complainants in one of the cross-bills filed in this cause, having entered their exceptions herein, pray an appeal from the decree of this court to the Supreme court of this state, which is allowed to them on filing herein, within thirty days from

this date, an appeal bond in the penal sum of $250, with surety thereon, to be approved by the clerk of this court, and also their certificate of evidence in this cause. And leave is hereby given said complainants in said cross-bill to file herein a bill of exceptions within thirty days from this date.

634 I, the undersigned, Jacob Roth, hereby admit the receipt of the sum of six hundred and thirty-eight fifty-five one hundredths ($638 $\frac{55}{100}$ dollars, from Amalie Staehle Roth, in full satisfaction of the decree in said cause, and in full satisfaction of all right, title, claim or demand I have or might have in or to my part of the property involved in the above entitled cause, and in full of all claims or demands I have or might have against said Amalie Staehle Roth, under or by virtue of the marriage and inheritance contract between her and her husband John George Roth, now deceased or otherwise, and I hereby ratify and confirm said decree entered in said cause, and assent thereto, and I hereby waive and release all errors of every description in said cause, said decree, and waive all rights to appeal or to bring writ of error to review the proceedings in said cause and I hereby authorize the clerk of said court to enter satisfaction of said decree in full for me.

Witness my hand and seal this fourteenth day of July, A. D. 1881.

JACOB ROTH. [SEAL.]

636 I, the undersigned John George Roth, hereby admit the receipt of the sum of two thousand five hundred and sixty-nine $\frac{02}{100}$ ($2,569$\frac{02}{100}$) from Amalie Staehle Roth, in full satisfaction of the decree in said cause and in full satisfaction of all right, title, claim or demand I have or might have in or to any part of the property involved in the above entitled cause, and in full of all claim or demand I have or might have against said Amalie Staehle Roth, under or by virtue of the marriage and inheritance contract between her and her husband, John George Roth, now deceased, or otherwise, and I hereby ratify and confirm said decree, entered in said cause, and assent thereto, and I hereby waive and release all errors of every description in said cause and decree, and waive all right to appeal or to bring writ of error to review the proceedings in said cause, and I hereby authorize the clerk of said court to enter satisfaction of said decree in full for me.

Witness my hand and seal this 14th day of July, A. D. 1881.

JOHANN GEORGE ROTH. [SEAL.]

I, the undersigned, Gottlieb Roth, hereby admit the receipt of one thousand two hundred and ninety seven $\frac{45}{100}$ (1,297.45) dollars from Amalie Staehle Roth, in full satisfaction of the decree in said
638 cause, and in full satisfaction of all right, title, claim or demand I have or might have in or to any part of the property involved in the above-entitled cause, and in full of all claim or demand I have or might have against said Amalie Staehle Roth, under or by virtue of the marriage and inheritance contract between her and her husband, John George Roth, now deceased or otherwise, and I hereby ratify and confirm said decree entered in said cause, and assent thereto, and I hereby waive and release all errors of every description in said cause and decree, and waive all right to appeal or to bring writ of error to review the proceedings in said cause, and I hereby authorize the clerk of said court to enter satisfaction of said decree in full for me.

Witness my hand and seal, this 14th day of July, A. D. 1881.

GOTTLIEB ROTH. [SEAL.]

And heretofore, to wit, on the 30th day of July, in the
650 year last aforesaid, to wit, A. D. 1881, there was filed in the office of the clerk of said court a certain appeal bond, which is in words and figures as follows, to wit:

Know all men by these presents that we, Madelaine Roth and Louisa Moser, of the county of Cook and state of Illinois, are held and firmly bound unto Amalie Staehle Roth, of Schorndorff, in the Kingdom of Wurtemburg, in the penal sum of two thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals this 28th July, A. D. 1881.

The condition of the above obligation is such that whereas, in a suit in chancery pending in the Superior court of the county of Cook, and state of Illinois, wherein said Madelaine Roth is complainant and Frederica Ehman et al. are defendants. And at the July term thereof, A. D. 1881, and on the 12th day of that month, by a decree of that court then rendered, the bill of said complainant in said suit was dismissed, and said complainant was required to pay one half of the costs made by said Amalie Staehle Roth, from
651 which decree said Madelaine applied for and has obtained an appeal to the Supreme court of said state.

Wherefore, should she prosecute her appeal with effect, and pay the amount of the costs so decreed against her, and that may be decreed against her, in case said decree shall be affirmed in said Supreme court, this obligation will become void, otherwise remain in full force.

MADELAINE ROTH, [SEAL.]
LOUISA MOSSER, [SEAL.]

Approved: JNO. J. HEALY, *Clerk.*

ASSIGNMENT OF ERRORS IN SUPREME COURT OF ILLINOIS.

1. That the court admitted improper evidence offered by said Amalie Staehle Roth, so called, and rejected proper evidence offered by appellant.

2. That the court considered and acted upon improper evidence offered by said Amalie, and refused to and did not consider proper evidence offered by appellant.

3. That the court overruled appellant's exception to answers.

4. That the court dismissed appellant's bill.

5. That the court rendered a decree against complainant.

6. That the court should have rendered a decree in her favor for what she claims and for costs of suit.

7. Admitting that the court should not have so found in her favor, which she does not, he should have found in her favor
653 and against said heirs of said Roth, deceased, for a portion of the costs made and expenses incurred by her in the suit against Amalie for the amount admitted to be due her, as he should have, in her favor; and,

8. In holding that said Roth, deceased, and said Amalie were ever lawfully married or that the so-called marriage was valid and binding, and operated as such in Illinois.

9. In holding that said Roth, deceased, left surviving him said Amalie as his widow, and also in holding that appellant is not.

10. In holding that said marriage contract is valid.

11. That by reason of said so-called marriage contract and the death of Roth, deceased, in that a descendant Amalie became seized of one-half of the legal estate and title of the undivided half of the premises, and of the equitable estate of the other half, as it would have been error to have held either.

12. That the naked title to one-half of the premises, by reason of the death of said Roth, became vested in the descendants of his deceased brother's for the use of said Amalie.

13. That a legally constituted guardian of Frederick Henbach, a minor, who resides in the Kingdom of Wurtemburg, had received his share of such marriage contract, and had receipted
654 therefor, and also holding that said Amalie is entitled to the interest in the undivided portion of the premises, of which said minor is owner, and to have the title thereto confirmed in fee in her and to the possession and rents and profits thereof, and that none other of the parties have any right, title or estate in any of the premises.

14. That Amalie is entitled to have the title confirmed to her in fee of all of the premises, and that none other of the parties have any interest, right, title or estate of any description to any part of it.

15. That Gunzenhauser, receiver, pay to Amalie all rents, upon

presentation of receipt from her, her agents or solicitors, and that upon presentation of receipt from any of them that he be discharged.

16. That appellant had no interest in any portion of the premises, and did not have when she executed the so-called agreement of September 9, 1873.

17. That the so-called agreement of the 9th September, 1873, and of the 26th of September, 1876, and the so-called deed signed October 3rd, 1876, and dated September 11th, 1876, or either or any of them, appellant renounced and released any claim that she had or might be entitled to, according to the laws of Illinois,
655 to the premises in question. And also in holding that the so-called deed was made in pursuance and "remuneration" of such settlement.

18. That she is by such so-called instruments, or any of them, estopped from asserting what she claims in her bill.

By reason whereof, appellant prays that said decree may be reversed.

By C. M. HARRIS,
Her Solicitor.

ADDITIONAL ASSIGNMENT OF ERRORS IN SUPREME COURT OF ILLINOIS.

658 1. In the holding in the decree that said Amalie was entitled to the rents and profits, and also in ordering that they be paid to her.

2. That she was entitled to the possession of the real estate, or to have her title (she never had any) confirmed in her in fee.

3. That complainant had no interest in the realty; also in holding that she had none when she executed the so-called agreement of the 9th of September, 1873.

4. In holding either that the so-called marriage contract was valid, or that it ever became operative, or that it was made upon a valuable consideration, or that it provided that none of his relations or heirs at law should have any claim of inheritance to any portion of his real estate.

5. In not determining the effect of the marriage of complainant and Roth, deceased, and his death, or either, on the descent of his property, or the right of dower of complainant, of which marriage no mention is made in such decree.

659 6. In not determining whether the alleged decree claimed to have been rendered in Wurtemburg, or the so-called statute on which only is it claimed that it was rendered, had any effect on such marriage mention, of which is made in the decree.

7. The court not only erred in dismissing complainant's bill for want of equity, as stated, as it did in dismisssing it at all, but further

erred, in dismissing it without the payment of $2,569\frac{45}{100}$, stated in the decree to have been due from Amalie to complainant for, as stated therein, purchase money, or even ordering the payment thereof, or in any way providing for the security thereof.

By reason whereof, also, appellant prays that said decree may be reversed.

By C. M. HARRIS,
Her Solicitor.

664 Opinion by MULKEY, J.; filed May 12th, 1882:

In the view we take of this case, we do not deem it necessary to follow counsel in the wide range their exhaustive and elaborate arguments have taken; but shall confine ourselves to one or two of the topics discussed in the briefs, which we regard as conclusive of the controversy, whatever may be our views with respect to the other issues in the case.

So far as as the marriage between Roth and Madelaine Moser is concerned, we have no hesitancy in saying, that for all purposes in this state, it was a legal and valid marriage, notwithstanding Roth at the time was a subject of the Kingdom of Wurtemburg, and had not obtained a license, authorizing such marriage, from the sovereign of that kingdom, as required by the laws thereof. As both the parties were domiciled here at the time of its celebration, it is not important to determine whether the validity of a marriage depends upon the *lex domicili* or the *lex loci contractus*, for whatever the conclusion might be reached upon that question, the result would be the same, so far as this case is concerned. Both laws being identical, if the marriage was in conformity with either, it must necessarily have been with the other also, and as it seems to have been solemnized in strict conformity with our statute
665 regulating the subject, and as the parties were manifestly competent under our own laws, to contract the relation, it follows, as before stated, the marriage was valid and binding.

While this marriage was clearly valid here for all purposes whatsoever, it does not follow that upon the return of the parties to the country of their nativity, and of which they were still subjects, it would or ought to be held equally valid here, for it is clearly settled by the decided weight of private international law, so-called, that every state has the power to enact laws which will personally bind its citizens or subjects, when sojourning in a foreign jurisdiction, provided such laws in terms, profess to so bind them when thus circumstanced.

It is true, such laws have no extra territorial effect so as to authorize their enforcement in a foreign country, and may, there so far as their execution is concerned, be said to remain dormant till the return of those violating them, when they will be enforced in the same manner,

and to the same extent as if their infraction had occurred within the state enacting them. Nor does it follow the status or rela-
666 tion created by the marriage could only be annulled by our own courts, or that it could only be annulled by other courts for such causes as would be recognized as sufficient for that purpose under our own laws. When the parties returned to Wurtemburg and acquired a new domicile, then so far as their personal rights and relations are concerned, our laws and government ceased to have any power over them, or concern with them. Personally, the state had no claims on them, and they owned it no allegiance or duty. Whether the Kingdom of Wurtemburg on their return, and acquiring a new domicile there, would recognize the status or relation which they had contracted here, depended upon its own laws, and not upon ours. That kingdom in 1808 adopted an ordinance or law which was in full force at the time of the marriage in Chicago, declaring all such marriages in a foreign state without the license of the sovereign, absolutely null and void. It was, therefore, according to the general current of authority on the subject, entirely competent for the courts of that kingdom, having jurisdiction of such matters, to give effect to that law by amending and setting aside the marriage upon a proper application for that purpose which was done in this case.

Ordinarily where a party upon a change of domicile goes into another state or country, the personal *status* which he carries
667 with him will be recognized by the courts of the latter country. This is certainly the general rule, but it is subject to certain well recognized exceptions. If, for instance, such status has been acquired, as in the present case, by a violation of an express provision of the positive law of the state in which its recognition is asked; or if it be contrary to the genius and spirit of its institutions, as a title of nobility would be here; or if it is opposed to its settled policy, or to the good order and well being of society, or to the public morality and decency — in all such cases the status would not and should not be recognized by the courts of the latter state. Assuming the compromises of appellant with Amalie and Roth respectively, relating to her interest in the latter's estate, were made by her in ignorance of her rights, and that they were effected through the fraud and misrepresentations of them and others acting in concert with them, as is claimed by her, of which we express no opinion at least for the present, it follows the result of this case must depend chiefly upon the legal effect which must, under the circumstances stated, be given by the courts of this state to the decree rendered by the Wurtemburg court annulling the marriage. And this we regard as the vital question in the case. The general ruling unquestionably is, where it affirmatively appears the
668 court of a foreign state has jurisdiction of the parties and subject matter of the suit, its judgment or decree will be conclusive on the parties, their legal represe ntatives and privies in all

countries where the matters litigated are again drawn in question; and this is particularly true with respect to judgments or decrees affecting the status of a person; for they are in the nature of judgments *in rem* which are binding on the whole world. Wharton's Conflict of Laws, sections 800, 801–2, 815–16–17–22–35; Bigelow on Estoppel, 170–178. Freeman on Judgments, Secs. 518.

The above rule is also fully recognized by this court. *Baker* v. *Palmer*, 83 Ill., 568. The limitation to this rule is, that it may be shown that such judgment or decree was obtained by means of fraud or some gross abuse of the process of the court or flagrant departure from the ordinary course of judicial procedure, as, for instance, that a party in interest sat as a judge in the cause. While it is claimed by counsel for appellant, in general terms, that the court rendering the decree in question acted without jurisdiction, and that the same was obtained by fraud, yet we fail to discover anything in the record to warrant either of these charges.

It is not sufficient, as it has often been held by this court, for
669 the purpose of successfully assailing a transaction on the ground of fraud, to charge fraud generally; but the complaining party must state in his pleading and prove on the trial the specific acts or facts relied on as establishing fraud. That has not been done in this case. So far as we are able to discover, the trial was perfectly regular and conducted with the utmost fairness; and we see no ground to question the jurisdiction of the court.

The depositions of persons learned in the law of that country have been taken in this cause, and they clearly show the several courts through which that case passed during its pendency were by the laws of that country the proper tribunals to take cognizance of cases of that character in the manner it was done; and it is further shown that both parites appeared in the cause by themselves and counsel; hence, as before stated, we see no ground for questioning the jurisdiction of those tribunals. We are of opinion, therefore, the decree of nullity must be given in the courts here the same effect which would be given to it by the courts of the country in which it was rendered. The effect of the decree there, as we understand it, was not merely to establish conclusively the nullity of the contract of marriage or of the marriage itself, but also to annul and terminate the status or marital relation of the parties which
670 arises from a *de facto* as well as a *de jure* marriage, so as to leave them in precisely the same condition as if no marriage had ever taken place between them. This being the effect of the decree there, it must be given the same effect here. Such, then, being the legal operation of the decree, it follows that the appellant was not, at the time of Roth's death, his wife, either *de facto* or *de jure*, and hence she is not his widow; for no one answers that description who was not his wife at the time of his death, and, consequently, she has no right as such to succeed to his estate.

For the same reason it follows that the subsequent marriage be-

tween Roth and Amalie was lawful and valid, and that relation having continued up to the time of his death, it results that she and not appellant is his lawful widow, and as such is entitled to his estate. It is true the "marriage and inheritance contract" did not, upon his decease, have the effect of clothing her with legal title to the real estate in controversy as his survivor, as it doubtless would have done had the property been situated in the Kingdom of Wurtemburg instead of here; for it is not competent for parties here or elsewhere, by mere agreement, to change the manner of transfer-
671 ring real property in this state; but the agreement in question, upon his decease, operates as an equitable assignment of the estate to her, which was properly enforced by the decree in this cause.

Having reached the conclusion stated with respect to the decree of nullity, it is, therefore, unnecessary to discuss the effect of the compromises above alluded to and relied upon as an estoppel by appellee.

Whatever our views might be with respect to that matter, we are of opinion the law is with the appellee on the grounds already stated.

Decree affirmed.

SCOTT, J.: I do not concur in this decision.

672 DISSENTING OPINION BY WALKER, J.

The parties were domiciled in this state when the marriage was consummated. Under our laws they were competent to enter into the contract, and they did, in strict conformity to all of the requirements of the laws of this state, and it is on all hands conceded that it was valid according to our laws. All contracts lawfully made, confer rights that must be enforced by our laws.

Among the rights conferred by that contract, was the right of the wife to dower in her husband's real estate, and to become his heir to one-half of the real estate of which he might die seized, having no children living or descendants of such children. These were the vested rights she acquired by this contract, and she cannot be divested of them by the contract being declared void, by the tribunals of this state. The foreign court had no power to construe and give authoritative judgment against the validity of contracts made under our laws, and we are not bound by the decree of nullity.

Had any court, having competent jurisdiction, granted a divorce then by abrogating the marriage contract she would have lost her rights to dower and heirship, because the contract was destroyed in all of its parts, and the parties absolved from its performance, and all rights under it destroyed
673 and ended. But in this case there was no divorce, but it was decreed in the very teeth of our never doubted

laws to have been void. The tribunals of this state are not bound by the decree of the foreign tribunal. That government has no pretense of power to control the title to or descent of property in this state. As to power of controlling the rights of and descent of property by that kingdom is absolutely wanting, and it cannot, under any circumstances control the rights of persons in this state, under our laws. As well contend that had the laws of that kingdom been that none of its subjects, should purchase or hold real estate, without the consent of the King, and deceased had purchased this property as he did, and had died, that his heirs could not inherit his property because he had not procured the consent of his King. I apprehend no one would contend for such a doctrine and the effect of this case is to so hold.

I am therefore unable to concur in the conclusion reached in this case.

JUDGMENT OF SUPREME COURT.

674 Be it remembered, to wit: on the 12th day of May, A. D. 1882, the same being in vacation after the term of court aforesaid, the following proceedings were, by said court, had and entered of record, to wit:

Madelaine Roth
No. 517. *v.* } *Appeal from Superior Court of Cook County.*
Fredricke Ehman *et al.*

On this day came again the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and that that record is no error. Therefore, it is considered by the court that the decree aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court, that the said appellees recover of and from the said appellant their costs, by them in this behalf expended, and that they have execution therefor.

STAY ORDER.

675 The opinion of said court in this case having been filed in vacation, and petition for rehearing and notice thereof, with proof of service of such notice having been filed with the clerk of said court in apt time under the rules—and the undersigned, a judge of said court, having carefully examined said petition—it is hereby ordered that

all further proceedings authorized by the judgment of this court in said case be stayed until the next term of this court, to be held at Ottawa, in September proximo.

Done at Chicago, this 4th day of August, 1882.

T. LYLE DICKEY,
A Judge of the Supreme Court of Illinois.

676 Be it remembered, to wit: on the 22d day of September, A. D. 1882, the same being one of the days of the term of court aforesaid, the following proceedings were, by said court, had and entered of record, to wit:

MADELAINE ROTH
No. 24 R. H. *vs.*
FREDERICK EHMAN ET AL.

Appeal from Superior Court of Cook County.
Petition for re-hearing.

Now, on this day, this cause coming to be heard upon the petition of the appellant for a re-hearing herein, and the court being now duly advised in the premises, it is considered and ordered by the court that said petition for a re-hearing be overruled and denied. And it is further ordered by the court that the order staying proceedings, heretofore entered herein, be now set aside and held for naught. And it is further considered by the court that said petitioner pay the costs and charges herein taxed.

677 STATE OF ILLINOIS,
NORTHERN GRAND DIVISION. } ss.

I, Everell F. Dutton, clerk of the Supreme court for the Northern Grand Division of the State of Illinois, do hereby certify the above and foregoing to be a full and complete transcript of the record (except the certificate of evidence) in a certain cause entitled in this court: Madelaine Roth, appellant, *versus* Frederica Ehman, Casper Ehman, Frederica Schweitcer, William Schweitcer, Frederick Henbach, Jacob Roth, John George Roth, Gottlieb Roth, William Roth, Jacob Roth, Christian Roth, Johannes Roth, Amalie Staehle Roth, John Gunzenhauser, Monroe N. Lord, Robert McClellan, James B. Smith, Robert Bourzutchky, August Schafhauser, The Nevada Loan Agency, George Buttenmuller, John Mergen, Gustav Labb, William B. Snowhook, Henry J. Christoph, Patrick W. Snowhook, William M. Johnson, George W. Gray, John C. Richberg, Frank Scales, The Merrill Manufacturing Company, Augustus G. Ashley, Wells Lake, Charles C. Lake, Frederick Simon Melitzer, Patrick Cummings, Bridget Walker, Eli L. Canfield, Mathilda Staehle, Albert Staehle, Emma Staehle, Julie Staehle, Mathilda Staehle, Eugene Staehle, Alfred Staehle, Marie Roth,

Karolina Roth and Christiana Roth, appellees, as the same appears of record, and on file in my said office.

Witness my hand, and the seal of said Supreme court, at Ottawa, in said state, this fourth day of January, 1883.

[SEAL.] E. F. DUTTON,
Clerk.

679 In the supreme court of the United States.

Madalaine Roth
v.
Frederica Ehman,
Amalie Staehle Roth,
so called, *et al.*

In Chancery and on Error to the Supreme Court of the State of Illinois.

Know all men by these presents, that we, said Madalaine Roth and Francis F. Munson, of the city of Chicago and state aforesaid, are firmly bound unto the said Amalie Staehle Roth, so called, in the sum of two thousand dollars, to be paid to her, said Amalie, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and all and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this 25th day of November, A. D. 1882.

Whereas, the above named Madalaine Roth hath prosecuted a writ of error to the supreme court of the United States to reverse the judgment in the above entitled suit by the supreme court of the state of Illinois, being in a suit numbered 126 therein, on appeal from the superior court of the county of Cook, in said state, taken by said Madalaine. Now, therefore, the condition of this obligation is such that if the above named Madalaine Roth shall prose-
680 cute her said writ of error to effect and answer all damages and costs if she shall fail to make good her plea, then this obligation shall be vaid, otherwise the same shall be and remain in full force and virtue.

Witness: MADALAINE ROTH, [SEAL.]
C. M. HARRIS. FRANCIS F. MUNSON. [SEAL.]

Approved this 25th day November, A. D. 1882.
JOHN M. SCOTT, *Chief Justice of Illinois.*

Endorsed. Filed Nov. 28th, 1882.
E. F. DUTTON, *Clerk.*

WRIT OF ERROR.

681 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the Supreme court of the State of Illinois. Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said Supreme court, on an appeal taken by Madelaine Roth from the chancery side of the Superior court of the county of Cook, in said state, in which plea or suit said Madelaine Roth is appellant, and Frederica Ehman, Casper Ehman, Frederica Schweitzer, William Schweitzer, Frederick Henbach, Jacob Roth, John George Roth, Gottlieb Roth, Wilhelm Roth, Jacob Roth, Christian Roth, Johannese Roth, Amalie Staehle Roth, so called, John Gunzenhauser, Monroe N. Lord, Robert McClelland, James B. Smith, Robert Bourtzutchky, August Schaffhauser, The Nevada Loan Agency, George Beuttenmuller, John Mergen, Gustav Labb, William B. Snowhook, Henry J. Christoph, Patrick W. Snowhook, William M. Johnson, George W. Gray, John C. Richberg, Frank Scales, The Merrill Manufacturing Company, Augustus J. Ashley, Wells Lake, Charles C. Lake, Frederick Simon Melitzer, Patrick Cummings, Bridget Walker, Eli L. Canfield, Mathilde Staehle, Albert Staehle, Emma Staehle, Julie
682 Staehle, Mathilde Staehle, Eugene Staehle, Alfred Staehle, Marie Roth, Karoline Roth, and Christiana Roth, are appellees, manifest damage of said Madelaine Roth as by her complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice be done to the parties aforesaid in that behalf, you are hereby admonished that if judgment be given therein, that then, under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same to the Supreme court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1883, in the Supreme court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme court may cause further to be done therein to correct that error, what of right and according to the law and customs of the United States should be done.

Witness, Honorable MORRISON R. WAITE, chief justice of the Supreme court of the United States, this 27th day of November, in the year of our Lord one thousand and eight hundred and eighty-two, and of the independence of the United States the 107th year.

WM. H. BRADLEY,
Clerk of the U. S. Circuit Court for the Northern District
683 *of Illinois.*

(Endorsed as follows, to wit:)

Copy of writ of error from the supreme court of the United States of America, to that of the state of Illinois, wherein the within Madalaine Roth is plaintiff in error, and Frederica Ehman *et al*,, within named, are defendants in error, deposited by said Madalaine Roth, in the clerk's office of the court last aforesaid, for the use and benefit of said defendants in error, and to be therein filed for their use and benefit.

GEO. W. SMITH,
Sol'r for Madalaine Roth.

C. M. HARRIS, *Sol. for Madalaine Roth.*
Filed Nov. 28th, 1882.

E. F. DUTTON,
Clerk.

684 STATE OF ILLINOIS, ss.
Northern Grand Division.

I, Everell F. Dutton, clerk of the supreme court of Illinois, in the northern grand division of said state, do hereby certify that in a certain cause, lately pending in said court, wherein Madalaine Roth was appellant, and Frederica Ehman, Casper Ehman, Frederica Schweitser, William Schweitser, Frederick Henbach, Jacob Roth, John George Roth Gottlieb Roth, William Roth, Jacob Roth, Christian, Johannes Roth, Amalie Staehle Roth, John Gunzenhauser, Monroe N. Lord, Robert McClellan, James B. Smith, Robert Bourzutchky, August Schafhauser, The Nevada Loan Agency, George Beutenmuller, John Mergen, Gustav Labb, William B. Snowhook, Henry J. Christoph, Patrick W. Snowhook, William M. Johnson, George W. Gray, John C. Richberg, Frank Scales, The Merrill Manufacturing Company, Augustus G. Ashley, Wells Lake, Charles C. Lake, Frederick Simon Melitzer, Patrick Cummings, Bridget Walker, Eli L. Canfield, Mathilda Staehle, Albert Staehle, Emma Staehle, Julia Staehle, Mathilda Staehle, Eugene Staehle, Alfred Staehle, Marie Staehle, Karoline Roth and Christian Roth, were appellees, a final judgment or decree was entered in said court in said cause, on the 12th day of May, A. D. 1882, and that a petition for a re-hearing of said cause was denied by said court on the 22nd day of September, A. D. 1882, as will fully appear in the foregoing transcript of the record therein.

That on the 28th day of November, A. D. 1882, a writ of error issued in the name of the Hon. Morrison R. Waite, chief
685 justice of the supreme court of the United States, under the hand of William H. Bradley, clerk of the United States circuit court, for the northern district of Illinois, with the seal of said court attached, returnable to the October term, A. D. 1883, of the supreme court of the United States, was lodged, together with a copy thereof, with me, as clerk of said supreme court of Illinois, of

which the foregoing is a copy. And that said writ of error was duly allowed by the Hon. John M. Scott, chief justice of said court, and that on the same day an appeal bond, duly approved by said chief justice, was lodged with me and filed by me in said cause, of which the foregoing is a copy. That on or about the same day a certificate of said chief justice was filed with me in said cause, and a citation signed by said chief justice, directed to the said defendants in error, named in said writ of error, together with proof of service of same, on Rosenthal and Pence, attorneys for said defendants in error.

That thereupon I did make return to said writ of error, by making a complete transcript of the record in said cause, including the certificate of evidence and duly certified the same according to law, and did at the same time attach thereto the said writ of error and the allowance thereof by said chief justice. Also said citation and the proof of service thereof, and also the said certificate by said chief justice, and did also attach thereto a copy of said bond, and did duly certify thereto. And that said transcript of record and the documents so attached thereto with the certificates by him aforesaid, he did on or about the 30th day of November, A. D. 1882, de-
686 liver unto Charles M. Harris, counsel for said plaintiff in error, Madalaine Roth.

That I do not have in my possession copies of any of the documents so attached to said transcript, except the said writ of error and bond.

Witness my hand and the seal of said supreme court of
[SEAL.] Illinois, at Ottawa, in said state, this fourth day of January, A. D. 1883.

E. F. DUTTON, *Clerk.*

17-319

IN THE

Supreme Court of the United States,

October Term, A. D. 1882.

MADELAINE ROTH,
Plaintiff in Error,
vs.
FREDERICA EHMAN, AMALIE STAEHLE ROTH ET AL.,
Defendants in Error.

Motion to Dismiss Writ of Error.

Copy of

STIPULATION AS TO RECORD.

PRESS OF BLAKELY, BARNARD & CO., 104 RANDOLPH ST., CHICAGO.

IN THE

Supreme Court of the United States,

October Term, A. D. 1882.

MADELAINE ROTH,
Plaintiff in Error,
vs.
FREDERICA EHMAN, AMALIE STAEHLE ROTH ET AL.,
Defendants in Error.

Motion to Dismiss Writ of Error.

STIPULATION AS TO RECORD.

It is stipulated for the purposes of this motion by defendant in error that the record shows the following facts:

First. That defendant in error, Amalie Staehle Roth, alleges in her answer that John George Roth at the time of the marriage between him and said plaintiff in error, was a subject or citizen of Wurtemberg, and also that it was essential in order to enable that court to exercise jurisdiction and in order to obtain such decree of nullity in the courts of that kingdom, that he should have been such subject or citizen; and, further, that the decree of that court in Wurtemberg found that he was a citizen or subject at that time.

Second. Plaintiff in error in her pleadings denied that citizenship or his being a subject of any country was material, but alleged that at the time of such marriage he was a naturalized citizen of the United States of America; and it is further admitted that upon the taking of depositions in Stuttgart, Wurtemberg, plaintiff in error served notice upon said Amalie to produce in evidence upon a hearing of said cause the certificate of naturalization of said Roth as a citizen of the United States of America, to be used by plaintiff in error as evidence upon the hearing, and that if she did not so produce the same plaintiff in error would prove that he was such naturalized citizen by parol testimony.

That upon the hearing of said cause plaintiff in error proved that the records of all the courts in Cook county, Illinois, had been destroyed by fire in October, 1871.

That plaintiff in error then offered to prove that said John George Roth admitted, as much as thirty-two years ago, that he was a naturalized citizen of the United States of America, to which said Amalie by her counsel objected, on the ground that such citizenship could not be proven by parol testimony, and thereupon the court rejected said offer to prove the same, and plaintiff in error thereupon excepted to the ruling of the court and assigned such ruling for error in the Supreme court of the State of Illinois.

Third. It is agreed that if a federal question is involved in this case, that then this court has jurisdiction.

Fourth. It is admitted that plaintiff in error was domiciled in Alsace from October or November, 1870, until the year 1877, and since that time she has been domiciled in Cook county, Illinois.

Fifth. It is admitted that upon the examination of expert witnesses counsel for said Amalie asked each of them to examine the proceedings on which the decree in the court of Wurtemburg was obtained calling it a proceeding for divorce, and to state whether that court had jurisdiction in cases of divorce. That counsel for plaintiff in error objected to that question, which question was overruled, and exception taken and such ruling was assigned for error in the Supreme court of Illinois.

Sixth. That the Supreme court of Illinois based its opinion upon the validity of the decree of nullity in the court of Wurtemberg, and that the validity of the marriage between Roth and Amalie and also the validity of the marriage and inheritance contract depends upon the validity of the said decree of nullity.

Seventh. That the expert witnesses of said Amalie testified that whether said decree of nullity would be entitled to foreign recognition depended upon the legislation authorizing it where such recognition should be sought.

Eighth. It is admitted that the record shows that plaintiff in error and said Roth were lawfully married in the State of Illinois, where they were domiciled in 1855, in accordance with its laws, and that such marriage was lawful and valid according to the laws of Illinois. That said Roth died intestate July 12, 1876, in the kingdom of Wurtemberg, owner of and seized of all the property claimed in this suit, and that he was owner of all said real estate when he and said plaintiff in error were married, and that the same is all situated in Chicago, Illinois, and that he died without owing any debts, and that he did not leave surviving him any child or descendants of a child.

Ninth. It is conceded that it appears in the decree of nullity so entered by the court in Wurtemberg, that the

ordinance of 1808, which provides that if a subject shall marry abroad without the consent of the king or government of Wurtemberg, such marriage shall be void, was repealed in the year 1872 without a saving clause, and that such decree of nullity was granted or rendered on the said ordinance of 1808 which purported to render such marriage between plaintiff in error and said Roth void. And the same facts also appear from the testimony of the expert witnesses of said Amalie, and it is conceded that such repeal was had before the commencement of said nullity suit in which said decree was rendered.

Tenth. While defendant in error does not concede that there is any federal question in this case, she does concede to plaintiff in error the right to refer to any matters in the record which she deems material, and the plaintiff in error is not to be precluded by this stipulation from so doing.

JULIUS ROSENTHAL,
A. M. PENCE,
Counsel for Amalie S. Roth.

Upon request of counsel for plaintiff in error, we agree that the foregoing shall be considered a part of the record, and that the printed copies of the foregoing, filed in this cause by plaintiff in error, are correct; and, further, that the assignment of errors appearing in printed brief of plaintiff in error is a correct copy of the assignment of errors written on the transcript in the case.

February 27, 1883.

JULIUS ROSENTHAL,
A. M. PENCE,
Counsel for said Amalie Staehle Roth.
Defendant in Error.

17-319

IN THE

SUPREME COURT of the UNITED STATES.

October Term, A. D. 1882.

MADELAINE ROTH,
Plaintiff in Error,
vs.
FREDERICA EHMAN, AMALIE STAEHLE ROTH ET AL.,
Defendants in Error.

Error to the Supreme Court of the State of Illinois.

JULIUS ROSENTHAL,
A. M. PENCE,
COUNSEL FOR AMALIE STAEHLE ROTH, DEF'T IN ERROR.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

IN THE

SUPREME COURT of the UNITED STATES.

October Term, A. D. 1882.

MADELAINE ROTH,
Plaintiff in Error,
vs.
FREDERICA EHMAN, AMALIE STAEHLE ROTH ET AL.,
Defendants in Error.

Error to the Supreme Court of the State of Illinois.

And now comes Amalie Staehle Roth, one of the defendants in error, by Julius Rosenthal and A. M. Pence, her counsel, and moves this Honorable court to dismiss said writ of error in said cause so sued out of this court, and directed to the Supreme court of the State of Illinois, for want of jurisdiction, and assigns the following reasons therefor:

1st. Because no federal question is involved in said cause.

2d. Because, in the decision of said cause in said Supreme court of Illinois, there was not drawn in question the validity of any treaty or statute of, or an authority exercised under the United States; nor was said decision

against the validity of any treaty or statute of, or an authority, exercised under, the United States.

3d. Because, in the decision of said court there was not drawn in question the validity of any statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States; nor was said decision of said Supreme court in favor of the validity of any such statute.

4th. Because said plaintiff in error did not claim in said cause any title, right, privilege or immunity under the constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States, nor was the said decision of said Supreme court against any title, right, privilege or immunity specially set up, or claimed in said case by said plaintiff in error, under such constitution, treaty, statute, commission or authority.

JULIUS ROSENTHAL,

A. M. PENCE,

Counsel for said Defendant in Error,
Amalie Stachle Roth.

Statement of the Case.

The final judgment in this cause was rendered on May 12, 1882, by the Supreme court of Illinois, and the judgment refusing a petition for a rehearing was entered on September 22, 1882.

A writ of error from this court was allowed on November 28, 1882, returnable to the October term, 1883.

The clerk of the Supreme court of Illinois made return to that writ, and delivered a complete transcript of the record of said cause, to Charles M. Harris, counsel for plaintiff in error. (Printed Rec., 108.)

Plaintiff in error has not filed said transcript in this court, nor caused said proceeding to be docketed.

This court holds that a certificate of the clerk of the lower court that an appeal has been taken or writ of error prosecuted, will give this court the right to entertain jurisdiction and to make orders.

Randolph v. *Barbour*, 6 Wheat., 128.
West v. *Brashears*, 12 Pet., 101.
Holliday v. *Batson*, 4 How., 645.

This court has also held that where it manifestly has no jurisdiction of the subject matter in controversy, that it will entertain a motion to dismiss the writ of error before the return day thereof, where the defendant in error has filed a copy of the record, and has docketed the cause.

Clark v. *Hancock*, 94 U. S., 493.

We have complied with that requirement; have

printed the necessary portions of the record, and now move to dismiss this writ of error, as not a single valid reason can be advanced in support of the jurisdiction of this court over the subject matter.

Madelaine Roth, the plaintiff in error, brought her bill of complaint in chancery against the defendant in error, Amalie Staehle Roth and others, asserting that she, the said Madelaine, was the widow of John George Roth, deceased, who died intestate and without children, and praying that a partition might be made between her and the heirs at law of John George Roth, deceased, of certain real estate in the city of Chicago, and also praying that her *dower* therein might be assigned to her. Under the statute of Illinois where there are no children, the widow inherits one-half of the real estate in fee, and takes dower in the other half.

We have caused to be printed the voluminous bill and all amendment thereto and the answers of this defendant thereto, which shows the issues or questions involved therein.

We have also printed the final decree therein in the Superior court of Cook county, Illinois, which shows the issues or questions decided. (Printed Rec., 85.)

Also the errors assigned by said Madelaine Roth in the Supreme court of Illinois. (Printed Rec., 98, 99.)

Also the judgment, and likewise the opinion, of the Supreme court of Illinois. (Printed Rec., 100, 104.)

These show the issues involved, the claims made by plaintiff in error, and the questions decided, and these are the only portions of the record necessary to present for that purpose.

Amalie Staehle Roth, this defendant in error, also

claimed to be the widow of John George Roth, deceased, and the Superior court of Cook County, and the Supreme court of Illinois found that she is the widow, and that Madelaine, the plaintiff in error, is not the widow, and the bill of complaint of Madelaine was dismissed.

The bill of complaint and the amendments thereto, are filled with an immense amount of immaterial matter and crude statements of pretended evidence, but there is not a single allegation from beginning to end, which creates or sets up a federal question under § 709 of Revised Statues of the United States.

Besides from the rights of the widow of John George Roth, the rights of his heirs at law were originally involved, but they failed to make good their claims; the decree went against them, and they did not appeal to the Supreme court of the state, nor have they brought their case to this court. They waived all errors (printed Rec., 95–97). So, the only question involved in this litigation is the right of the plaintiff in error, as the widow of John George Roth, deceased, to certain real estate in the State of Illinois.

The contention in the court below was, who is the the *widow*, for under the Illinois statute the *widow*, where there are no children, inherits in fee one-half of the real estate left by the husband (Chap. 39, Sec. 1, Rev. Stat., Ill.); and the *surviving wife* is endowed of one-third of the real estate left by husband. (Rev. Stat. Ill., Cap. 41, Sec. 1.)

Plaintiff in error alleges in her bill that she and John George Roth intermarried in the State of Illinois, where they were domiciled, on July 21, 1855, and that said J. G. Roth died intestate and without children, July 12,

1876, in the Kingdom of Wurtemberg, leaving her his widow.

She also alleges that said deceased was then and at the time of his death, a citizen of the United States; that he was born in the Kingdom of Wurtemberg; but she alleges that he had been naturalized and had become a citizen of the United Siates.

Defendant in error, Amalie Staehle Roth, answering, alleges that in the year 1856 said deceased and Madeline became domiciled in the Kingdom of Wurtemburg and thus resumed the domicil of his origin, which he retained, and where he lived until the time of his death. She also denies that he ever was a citizen of the United States. She also alleges that at the time of the intermarriage of said deceased and said Madelaine there was a statute or law of the Kingdom of Wurtemberg, and ever since has been, to the effect that no marriage of any of its citizens or subjects, consummated out of the Kingdom, without the consent of the king or the government of said Kingdom of Wurtemberg, should be valid and binding, and all such marriages of any of its citizens or subjects without the consent of the king or the government of said kingdom, were declared null and void by such statute. (Printed Rec., 55.)

She also alleges that on April 24, 1873, the royal matrimonial court at Ellwangen in said kingdom, in a certain cause therein pending, wherein said John George Roth was complainant, and said Madelaine Roth was defendant, entered a decree annulling, vacating and setting aside the said marriage between said John George and said Madelaine Roth, and that the ground of such decree was that said marriage was had in the State of Illinois, without the permission from said king or government of Wurtemberg

to said John George Roth to marry. That said royal matrimonial court had jurisdiction of the subject matter of said proceeding and decree, and had personal jurisdiction of both parties thereto who were then domiciled and living in the said kingdom, and had full power to act in the premises, and that its decree was in full force and effect, which decree she set up in bar to complainant's proceeding, and alleged that, by reason thereof, said Madelaine ceased to be the wife of said John George Roth, and that she was not his widow.

She also alleges that she, the said Amalie Staehle Roth, after said decree of nullity, intermarried with said John George Roth, in said kingdom, on November 27, 1873, where they were both domiciled at the time, and where they continued to be domiciled until the death of said Roth, in said kingdom, on July 12, 1876; and that they were both unmarried persons, and were entitled to be married according to the laws of said kingdom, which do not permit bigamy.

That the decree of nullity, so obtained in said Royal Matrimonial Court, found that said Roth was a subject of said kingdom at the time of his marriage in Illinois with said Madelaine, and was not a citizen of the United States.

She alleges that, by reason of said decree of nullity, and by reason of her subsequent marriage, and the death of said Roth, she, the said Amalie, is his widow.

There were also other defenses set up, such as the release and conveyance by said Madelaine of her interest in said lands to Amalie, etc., but it is not necessary to set them out for the purpose of this motion.

The Supreme court of Illinois found that said Made-

laine is not the widow, but that said Amalie is the widow of said deceased, and bases its judgment entirely upon the legal effect and operation of said decree in the Kingdom of Wurtemburg, to which opinion we refer. (Printed Record, 100.) See also advance sheets, 104 Illinois, page 35, where there is a full statement of the case.

We also refer the court to the final decree of the Superior court of Cook county. (Printed Record, 85.)

Aside from the issues made up by the pleadings, and their determination by the final decree, and aside from the opinion of the Supreme court of the state, which show clearly the claims of plaintiff in error, and the questions involved, we might also call the attention of this court to the errors assigned in the Supreme court of Illinois by plaintiff in error, as containing every possible question sought to be raised by said Madelaine, and as containing every possible claim set up by her in this case, or which was decided.

The certificate of the Chief Justice of the Supreme court of Illinois, as to the possible federal question involved in this record is not attached to this transcript, as the clerk of that court had attached it to the transcript delivered to counsel for plaintiff in error in making his return, and he did not retain a copy. (See clerk's certificate, printed Rec., 108.) But counsel for plaintiff in error has kindly furnished us with a copy of that certificate, which we here insert, and it is as follows:

"In the Supreme Court of the State of Illinois,
"Northern Grand Division.

"Madelaine Roth
v.
"Frederica Ehman *et al.*

"The petition of Madelaine Roth, to which this is attached, so far as it asks for a writ of error in the above entitled cause from the Supreme court of the United States to the Supreme court of the State of Illinois, is allowed by the undersigned chief justice of the Supreme court of the State of Illinois upon an examination of the matters and things alleged in such petition, and upon an examination of the transcript of the record of said cause, and the undersigned has been asked to and does hereby certify, that complainant, by her bill in the State court, among other things, demanded dower in the lands and estate of her alleged husband, John George Roth, now deceased, which right was denied her by the Supreme court of the State of Illinois, as will more fully appear from the opinion of said court delivered on the 12th day of May, 1882, which Supreme court is the court of last resort in the State of Illinois, and the decision is a final one of said court, and that the clause of the second section of the ordinance of 1787, that secured dower to the widows of persons dying intestate, in the northwestern territory, of which Illinois is a part, has not been repealed by the laws of the State of Illinois, except that dower by the state law may be barred by devise of lands or other possessions by will, unless renounced, or by jointure, or on account of adultery on the part of demandant during coverture; and that it does not appear, from anything contained in the record in said cause, that complainant's dower has been barred by or on account of any cause contained in the state laws; but I refuse to cer-

tify to other matters stated in said petition, and asked to be also certified to.

JOHN M. SCOTT,
Chief Justice of the Supreme Court of Illinois.

November 25, 1882.

From this certificate it will be seen what questions will be relied upon to sustain the jurisdiction of this court, although it will be seen the chief justice refuses to certify that there is a federal question involved, though he allowed the writ of error. It will be noted that the present chief-justice dissented from the opinion of the majority of the court. (Printed Rec., 103.)

Hence the claim that will be relied upon to show jurisdiction will be:

1st. That the ordinance of 1787 for the government of the Northwestern Territory is in full force and effect and is the law of the State of Illinois, so far as a widow's right to dower is concerned. And that a claim of dower by a person claiming to be a widow, is a claim made under the ordinance of 1787, which it will be claimed is a United States statute, and being disallowed, a writ of error will lie from the United States Supreme court to the state Supreme court, under section 709, Revised Statutes, United States, to review the judgment disallowing the claim.

This must be a fair statement of the position of plaintiff in error.

2d. In some way to us unknown, counsel for plaintiff in error may assert some claim, by reason of the United States citizenship claimed for said deceased. Or, as intimated to us, she may claim that the judgment of the Supreme court of Illinois impairs the obligation of a contract and deprives her of an interest in her husband's estate, vested in her by such marriage.

I.

The certificate of the chief justice does not state that any federal question was involved, and hence, *prima facie*, no federal question under section 709, Revised Statutes, United States, was involved.

II.

Do the facts stated in the certificate of the chief justice present a federal question?

(*a*) The ordinance of 1787 for the government of the Northwestern Territory, is not a federal statute under the present constitution of the United Stotes.

(*b*) The ordinance of 1787 has no force or effect in the State of Illinois since the organization of the state government where the state government has acted upon the same subject matter. The legislature of the state has fixed the widow's right of dower, and has superseded the ordinance, although the statute and the ordinance are similar upon that question.

(*c*) In the absence of all state statutes, the ordinance, where it gives a right, becomes the statute of the state, and operates as such and not as a federal statute.

(*d*) The ordinance of 1787 does not grant or create the right of dower, but only recognizes that right in section 2, as it existed at common law, and under the law of Virginia, of which the territory was a part. Such was the law of the territory, without any ordinance, both by the statute of Virginia and by the common law, as it existed prior to the fourth year of James I.

The following authorities show that no federal question can arise under the ordinance of 1787, or has arisen in this case, which would give this court the right to review the decision of the Supreme court of Illinois, under section 709 of the Revised Statutes, United States.

Menard v. *Aspasia*, 5 Pet., 505.
Strader v. *Graham*, 10 How., 82.
Messenger v. *Mason*, 10 Wall., 507.
Permeoli v. *First Municipality*, 3 How., 589.
Woodman v. *Kolbourn Mnfg. Co.*, 1 Biss., 549.

In *Menard* v. *Aspasia*, this court, in speaking of this *ordinance*, said: "There are various provisions in the "compact which are deeply interesting to the people of "Illinois, and which it is presumed no one would contend "could give a *supervisory jurisdiction* to this court. * * * *

"The provisions in the compact which relate to "property" and to "rights" are general.

"They refer to no specific property or class of rights. "It is impossible, therefore, judicially to limit their appli- "cation. If it were admitted that Aspasia is the prop- "erty of the plaintiff in error, and the court were to take "jurisdiction of the case, under the provisions of the ordi- "nance, must they not, on the same ground, interpose their "jurisdiction in all other controversies respecting prop- "perty which was acquired in the Northwestern terri- "tory. * * *

"No substantial ground of difference is perceived be- "tween the assertion of any other right to the property, "and that which is set up in the present case.

"The provisions of the ordinance will equally apply to "every description of claim to property personal or real. "And if from the general provisions respecting property, "this court shall take jurisdiction in this case, on the same "principle it may reverse the decisions of the Supreme "courts of Illinois, Indiana and Ohio; at least, in all cases "which involve rights that existed under the territorial "government; given perpetuity to this general provision, "and consider it as binding upon the people of these "states, and it must have an important bearing upon their "interests.

"Instead of looking to their constitution as the funda- "mental law, they must look to the ordinance of 1787. "In this instrument their rights are defined and their "privileges guaranteed.

"*And instead of finding an end of legal controversies* "*respecting property in the decisions of their own courts of* "*judicature, they must look to this court.*

"This cannot be the true construction of this instru- "ment. Its general provisions as to the rights of property "cannot give jurisdiction to this court.

"*They do not come within the twenty-fifth section of the* "*judicary act.*

"The complaint is not that property has been taken "from the plaintiff in error, in the language of the ordi- "nance, "without the judgment of his peers," nor that his "right has been affected by any law of the territory or of "the state.

"*It is not pretended that his right, whatever it may be, is* "*not secured as fully under the constitution and laws of Illi-* "*nois as under the ordinance.* * * *

"*His title does not arise under an act of congress.* This "is essential to give jurisdiction under this head.

"It is not enough to give jurisdiction that an act of "congress did not take away a right which previously "existed. Such an act cannot be said to give the right, "though it may not destroy it.

"This suit must, therefore, be dismissed, as this court "has no jurisdiction of the case."

If this writ of error were allowed there would be no end of cases brought to this court for review from the states composing the Northwestern territory, which could not be brought from any other state of the Union.

In such case the states of the Northwestern territory would not be upon equality with the other states of the Union. It would be a new departure, a new discovery, to hold these great states to be under a subjection to the general government to which none of the other states are subject. Counsel should have a patent for this invention.

It seems too absurd for argument. While the State of Illinois has a statute respecting dower (Rev. Stat. of Ill. of 1874, Cap. 41) plaintiff in error passes it by, and now for the first time claims under the ordinance of 1787, because the statute of the state gives the same right as provided in the ordinance.

If such were the law then every widow claiming dower, and every heir claiming an inheritance, could have his or her claim reviewed by this court, simply because the statute of the state corresponds with the ordinance or with the common law, as the ordinance is simply a recognition of the common law. If such were our condition then, as said by the court, "Instead of looking to their constitu-

"tions as fundamental law they must look to the ordinance "of 1787."

It is not pretended that plaintiff's right, whatever it may be, is not secured as fully under the constitution and laws of Illinois as under the ordinance. Can a party asserting a right under the statute of Illinois ask the interposition of this court when the decision of the state court is against him simply because the state law is the same as the ordinance?

In *Strader* v. *Graham*, 10 How., 92, this court held distinctly, that the ordinance of 1787 was not in force.

The court said:

"But it has been settled, judicially, that this ordinance is "not in force." * * * "Hence, it is impossible, "to look at the six articles which are supposed, in the "argument, to be still in force, without seeing at once "that many of the provisions contained in them are in-"consistent with the present constitution, and if they "could be regarded as yet in operation in the states formed "within the Northwestern limits of the territory, it would "place them in an inferior condition, as compared with the "other states, and subject their domestic institutions and "municipal regulations to the constant supervision and "control of this court."

The writ of error was also dismissed in that case. In that case a right was claimed under that ordinance, which was denied by the state court of last resort.

There is no pretense that in the Illinois Supreme court any right was claimed under the ordinance of 1787.

The question was not involved nor decided.

There was no question in the Supreme court of Illinois as to the rights of a widow, or by what law she claimed,

or as to the validity of such law, but the only question there was, who is the widow? and that question being ascertained, the construction or applicability of the law was not disputed.

III.

The certificate of the chief justice does not present any other question than that arising under the ordinance of 1787, and that being so, it will be concluded by this court that no other federal question was raised or decided by that court.

Carpenter v. *Bowyer*, 14 Wall., 236.

In the case cited this court said:

"Questions not decided in the State court, because not "raised or presented by the complaining party, will not be "re-examined in this court on a writ of error sued out "under the 25th section of the judiciary act."

But what other question can it be imagined counsel will present to this court as a possible federal question under that section.

If certain rights are claimed under the state law by a person claiming to be the widow of a deceased party and the State court disallows that claim, this court has no right to review that judgment. There is no statute of the United States which attempts to define or control the marriage relation.

The constitution of the United States contains no provisions by which the congress of the United States could regulate the right of marriage or divorce. Such rights and powers pertain entirely to the state; and not only is

there no United States law by which any attempt is made to control such rights, but such a law would be unconstitutional.

Barber v. *Barber*, 21 How., 582.
1 Bishop Mar. & Div., § 87.

As a general proposition the marriage status depends in no manner upon a question of citizenship. Certainly it does not by the laws of Illinois. Foreigners and citizens may there intermarry, and their rights are the same as if both were citizens.

Nor does the question of citizenship make any difference as to property rights in Illinois. Foreigners, as well as citizens, take by inheritance in the same proportion under the Illinois statutes.

Ill. Rev. Stat., Cap. 39.

Suppose that John George Roth was a citizen of the United States by birth or naturalization, and that Madelaine, by virtue of their marriage in Illinois, did obtain a vested interest in his real estate, of which she could not legally be deprived; yet the Supreme court of Illinois found that she did not have a vested interest in his real estate by virtue of such marriage, and that the decree in Wurtemburg dissolving their marriage, destroyed their marriage status, and that Madelaine was not his wife at time of his death, and that Amalie was.

Admit, for the argument, still further, that the decision of the Illinois Supreme Court was wrong, upon that question, yet what federal question was decided by that court.

Counsel may reply that this decision violates the provision of the United States constitution, in regard to impairing obligation of contracts.

Section 10, article 1, Constitution of United States, says that "no State shall pass any law impairing the obli-"gation of contracts."

If it be conceded that this *decision* or judgment impairs the obligation of a contract, that is, that Madelaine obtained a vested interest in Roth's estate by such contract of marriage, if it be a contract, yet there is no statute or law of the state relied upon by us, or attacked by plaintiff in error, which impairs the obligation of a contract. There is no pretence that there is a statute to that effect; and a judgment of a court which impairs the obligation of a contract does not fall within that provision of the constitution.

Knox v. *Exchange Bank*, 12 Wall., 379.
Com. Bank Cin. v. *Buckingham*, 5 How., 327.

As this court said in *Knox* v. *Exchange Bank:*

"But we are not authorized by the judiciary act to "review the judgments of the state courts, because their "judgments refuse to give effect to valid contracts, *or be-*"*cause those judgments, in their effect, impair the obligation* "*of contracts.* If we did, every case decided in a state "court could be brought here, when the party setting up "a contract alleged that the court had taken a different "view of its obligations to that which he held."

It is when the *legislature* passes a law that impairs the obligation of contracts, and not when the *court* construes a contract or a statute so as to impair the obligation of such contract, that this court takes jurisdiction.

Counsel will not deny that our law of dower is constitutional. His point is that it is constitutional, and is a transcript of the ordinance of 1787.

Granting then all that plaintiff in error claims, that the judgment of the Supreme court of Illinois is erroneous, that Madelaine had a vested interest in this property, which should have been protected; that the decree of nullity in Wurtemburg should not have been held an estoppel, and that she is the widow of John George Roth, where does the federal question arise? What statute of Illinois has been claimed by plaintiff in error to be repugnant to the constitution of the United States, and which has been decided constitutional by the State court?

What United States statute or treaty has been drawn in question and its validity denied? or what right title, privilege or immunity is claimed under the constitution of the United states, or any treaty or statute of the United States, or commission held or authority exercised under the United States, which has been denied? Counsel for plaintiff in error cannot point out any.

It is a wrong to which we should not be compelled to submit to have this case held until the return term of the writ.

Clark v. *Hancock*, 94 U. S., 493.

There is no federal question, and the writ of error should be dismissed.

JULIUS ROSENTHAL,

A. M. PENCE,

Counsel for Amalie Staehle Roth, def't in Error.

CHICAGO, Jan'y 26, 1883.

OFFICE SUPREME COURT U. S.
FILED
MAR 5 1883

17-315

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1882.

MADELAINE ROTH,
Plaintiff in Error,

vs.

FREDERICA EHMANN,
AMALIE STAEHLE ROTH, so called, *et al.*,
Defendants in Error.

In Error to Supreme Court of Illinois.

On Motion to Dismiss for Want of Jurisdiction.

C. M. HARRIS,
Solicitor for Plaintiff in Error.

CHICAGO, ILL.:
S. I. BRADBURY & SONS, LEGAL PRINTERS, 78 FIFTH AVE.
1883.

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Defendants in Error.

In Error to Supreme Court of Illinois.

ON MOTION TO DISMISS WRIT OF ERROR.

The fact that plaintiff in error has done everything necessary for the perfection of her writ of error, including the filing of the transcript of the record with the assignment of errors, some nine months sooner than required, although the most voluminous ever made in the Superior Court of Cook County, Illinois, and, probably one of the most, ever filed in this Court,—and that the writ is returnable to the next term of this court, before which the court could not have jurisdiction of the person if of the subject matter of the motion, shows that her appearance is voluntary, and disposes of pages 3 and 4 of Argument of Amalie's solicitors, including authorities having no application to the case, and would, if they had,—which, with the further fact that the concessions of Amalie, embraced in what is

called her stipulations, filed as a part of the record of the case, a copy of which will be here given, are but a small portion of the omissions of the printed record filed by her, which is not a skeleton of the twentieth part of the record, but claimed to be a sufficient printed portion of it, for this motion, although containing nothing in behalf of plaintiff in error, but her bill and amendments, her assignments of error in the Supreme Court of Illinois, and the certificate of Chief Justice Scott, while omitting the evidence sustaining such exceptions, and the petition on which such certificate was granted, not even her exceptions to answers, manifests an almost reckless desire by plaintiff in error to forward the consummation of the suit.

Such a printed record is certainly more objectionable than the want of one. Yet in *Crane* v. *Hoagland et al.*, WAITE, C. J., 5 Morrison's Transcript, 4, decided at this term, and, I suppose, at or after the return term, the Court says, that "as there was no printed record, they could not tell whether the assignment of errors which were contained in defendant in error's brief were in the record, but in the absence of anything appearing to the contrary, they would presume that they were, and as two of them presented jurisdictional questions, overruled the motion, saying that "the questions involved are not of character that we are inclined to consider on a motion to affirm, especially before the record is printed. It will be time enough to consider the objections to the assignment of errors when the cases come on for hearing."

This case not only involves the validity of Christian marriage, but the decision of the Supreme Court of Illinois is against it, on account of which and such a printed record, and the decisions in this case being the most remarkable ever made, patriotism as well as duty to

client requires of me extended remarks, which I believe the Court will approve on testing them with the record, especially, as the Court now holds that it will determine others as well as jurisdictional questions on trial.

STIPULATIONS OF AMALIE.

SUPREME COURT OF THE UNITED STATES.

October Term, 1882.

MADELAINE ROTH,
Plaintiff in Error,
vs.
FREDERICA EHMAN,
AMALIE STAEHLE ROTH ET AL.
Defendants in Error.

Motion to dismiss Writ of Error.

It is stipulated for the purposes of this motion by defendant in error that the record shows the following facts:

1st. That defendant in error, Amalie Staehle Roth, alleges in her answer that John George Roth, at the time of the marriage between him and said plaintiff in error, was a subject or citizen of Wurtemberg, and also that it was essential in order to enable said Court to exercise jurisdiction and in order to obtain such decree of nullity in the courts of that Kingdom, that he should have been such subject or citizen, and further, that the decree of that Court in Wurtemberg found that he was a citizen or subject at that time.

2nd. Plaintiff in error in her pleadings denied that citizenship or his being a subject of any country was material, but alleged that at the time of such marriage he was a naturalized citizen of the United States of America, and it is further admitted that upon the taking of depositions in Stuttgart, Wurtemberg, plaintiff in

error served notice upon said Amalie to produce in evidence upon the hearing of said cause the certificate of naturalization of said Roth as a citizen of the United States of America, to be used by plaintiff in error as evidence upon the hearing, and that if she did not so produce the same, plaintiff in error would prove that he was a such naturalized citizen by parol testimony.

That upon the hearing of said cause plaintiff in error proved that the records of all the courts in Cook county, Ills., had been destroyed by fire in Oct., 1871.

That plaintiff in error then offered to prove that said John George Roth admitted as much as thirty-two years ago that he was a naturalized citizen of the United States of America, to which said Amalie by her counsel objected, on the grounds that such citizenship could not be proven by parol testimony, and thereupon the Court rejected said offer to prove the same, and plaintiff in error thereupon excepted to the ruling of the Court, and assigned such ruling for error in the Supreme Court of the State of Illinois.

3rd. It is agreed that if a federal question is involved in this case that then this Court has jurisdiction.

4th It is admitted that plaintiff in error was domiciled in Alsace from October or November, 1870, until the year A. D. 1877, and since that time she has been domiciled in Cook County, Illinois.

5th. It is admitted that upon the examination of expert witnesses, counsel for said Amalie asked each of them to examine the proceedings on which the decree in the Court of Wurtemberg was obtained calling it a proceeding for divorce, and to state whether that Court has jurisdiction in cases of divorce. That counsel for plaintiff in error objected to that question, which objection was overruled and exception taken, and such ruling was assigned for error in the Supreme Court of Illinois.

6th. That the Supreme Court of Illinois based its opinion upon the validity of the decree of nullity in the Court of Wurtemberg, and that the validity of the marriage between Roth and Amalie, and also the validity of the marriage and inheritance contract depends upon the validity of the said decree of nullity.

7th. That the expert witnesses of said Amalie testified that whether said decree of nullity would be entitled to foreign recognition depended upon the legislation authorizing it where such recognition should be sought.

8th. It is admitted that the record shows that plaintiff in error and said Roth were lawfully married in the State of Illinois, in 1855, where they were then domiciled, in accordance with its laws, and that such marriage was lawful and valid according with laws of Illinois, That said Roth died intestate July 12, 1876, in the Kingdom of Wurtemberg, owner and seized of all the property claimed in this suit, and that he was owner of all said real estate when he and said plaintiff in error were married, and that the same is all situated in Chicago, Illinois, and that he died without owing any debts, and that he did not leave surviving him any child or descendent of a child.

9th. It is conceded that it appears in the decree of nullity, so entered by the Court in Wurtemberg, that the ordinance of 1808, which provides that if a subject should marry abroad without the consent of the King or Government of Wurtemberg, that such marriage shall be void, was repealed in the year 1872 without a saving clause, and that such decree of nullity was granted or rendered on the said ordinance of 1808 which purported to render such marriage between plaintiff in error and said Roth void, and the same facts also appear from the testimony of the expert witnesses of said

Amalie, and it is conceded that such repeal was had before the commencement of said nullity suit in which said decree was rendered.

10th. While defendant in error does not concede that there is any federal question in this case, she does concede to plaintiff in error the right to refer to any matters in the record which she deems material, and plaintiff in error is not to be predjudiced by stipulation from so doing.

JULIUS ROSENTHAL,

A. M. PENCE,

Counsel for Amalie Staehle Roth.

Upon request of counsel for plaintiff in error, we agree that the foregoing shall be considered a part of the record, and that the printed copies of the foregoing filed in this cause by plaintiff in error are correct copies, and further that the assignment of errors appearing in printed brief of plaintiff in error is a correct assignment of the errors, written on the transcript in the case.

February 27th, 1883.

JULIUS ROSENTHAL,

A. M. PENCE,

Counsel for Defendant in Error.

ASSIGNMENT OF ERRORS.

First. That on May 4th, 1878, complainant in error commenced on the chancery side of the Superior Court of the county of Cook, in said State, a suit against said defendants in error for the recovery of one-half in fee simple, and of the right of dower of one third during her life of all the real estate in her bill in said suit described and situated in said county, and of which Roth, hereinafter named, was owner when they were married, and for the recovery of the rents and profits thereof, which have accrued therefrom since the 12th of July, 1876, claiming all thereof as the widow of John George Roth, to whom she was married in the city of Chicago, in said county, on the 21st of June, 1855, and who died on the 12th of July, 1876, at Schorndorf in the kingdom of Wurtemberg, intestate, leaving surviving him neither a child nor a descendant of one.

That on the trial thereof it and said bill were dismissed by a decree of that court.

That from such decree she prosecuted to the Northern Grand Division of the Supreme Court of said State an appeal, where, on the 12th of May, 1882, and in the vacation of that court intervening the March and September terms thereof, such decree was affirmed by a majority of such court, and that thereupon, and in compliance with the rules of that court, she filed in such vacation, in the clerk's office of that court, on the 10th of June thereafter, her petition for a rehearing of said cause, which at the said last named term, and on the 22nd of said September, was by a diminished majority of that court overruled and denied

That the decision of the Supreme Court is based solely upon the recognition of an alleged decree of a so-called court of that kingdom, claimed to have been

made on an edict of a king thereof, proclaimed in 1808, and declaring invalid and void the marriage of any subject of that kingdom abroad without the license of the sovereign thereof therefor, but for which recognition of that decree the court would have necessarily held such alleged marriage, though claimed to have been contracted after the rendition of such decree, void, and have reversed the decree below, as is apparent from the record and the opinion delivered upon such decision, and the decision itself; and, if possible, is made more so by the fact that such petition for a re-hearing was denied by a diminished majority, and without the delivery of an opinion.

That such decree purports to hold that such marriage, by a change of domicile of the parties, became always void, but only because of having been contracted in violation of such edict; and if always void, the decree could neither have rendered it so, nor have changed the relation of the parties, and is, on account of either thereof, immaterial.

That notwithstanding the Supreme Court in such opinion concedes that plaintiff in error and her husband were competent to marry each other, and had in strict conformity with the laws of the State (Illinois) while domiciled in it, and that the marriage was valid and binding for all purposes in it, and that such edict had no extra-territorial effect upon it, and although it never had even local force, and consequently there was never even local jurisdiction; and although, as appears from the record of the suit, in which such decree was rendered as claimed, and from Amalie's expert testimony that it had been repealed without a saving clause before the commencement of such suit, and being penal, no judgment nor decree rendered upon it, an instant after such repeal would have even local force, which it never

had even under the doctrine of *lex domicilii*, because that the prohibition in it is not on account of personal disability, and would not, were it personal, under the American rules, even had the marriage been celebrated in fraud and evasion of the *lex domicilii* of the parties; and although such opinion concedes that it was in strict conformity with the *lex loci contractus*, *lex domicilii* and *lex rei sitæ*, and that succession to real estate situate in the former is involved; and although plaintiff in error has been domiciled ever since 1870, and over two years before the commencement of such suit, in Alsace, then a part of the empire of France, and the place of her nativity, of French parentage, and in Chicago, Illinois, and that upon the theory of such opinion and decision, such edict could not have affected the validity of such marriage in either country, had it even had local force, which it never had, and had not been so repealed, and consequently could not have conferred jurisdiction for such decree.

Such judgment is erroneous, because violative of the rights of plaintiff in error under, and protected by, federal constitutional provisions, and legislative enactment, and of the inherent power and authority of the federal government for self preservation, including the ordinance of 1787 for the government of the territory of the United States, northwest of the river Ohio, of which the territory of Illinois was a part, and of the Act of Congress of August 7th, 1787, by which such ordinance was adapted to the present federal constitution, and of the acts of Congress respectively of May 7th, 1800, of February 3rd, 1809, guaranteeing to the inhabitants of such territory the enjoyment of "all and singular the rights and privileges and advantages guaranteed and secured to the people by said ordinance."

Yet the court gave judgment against plaintiff in error,

although under such provisions, enactments and ordinances and inherent powers, under all of which she claimed, it should have given judgment in her favor; and that the judgment was not, nor could have been rendered upon, upon any other than such federal questions, as appears from the record and the opinion rendered upon such judgment, and the judgment itself.

Second. Because such judgment not only holds void plaintiff in error's marriage, and thereby renders such relation, though conceded by the Court to have been valid, illegitimate as well as void, and deprives her of all the rights and privileges of a wife and widow, but of vested rights, not only acquired by such marriage, but of additional ones of descent upon the death of her husband, and confers such vested rights upon the mistress of her husband, only because of such recognition of such decree and pretented marriage of Amalie.

Although it is conceded in such opinion that plaintiff in error's marriage was valid when celebrated, and that upon the theory of such opinion, and upon the evidence appearing from the record, its validity was not subject to such edict, and although such edict was not only penal and infamous, but was so repealed as already appears, wherefore such judgment is a violation of each of the following prohibitions of the Federal Constitution:

I. No bill of attainder, or *post facto* law should be passed, Art. 1, Sec. 9, Div. 33, which applies against a judgment rendered upon giving retrospective operation to an *ante facto* law, or one recognizing one so rendered.

II. No State shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, or emit bills of credit; make anything but gold or silver coin, a tender in payment of debts; passing

bill of attainder; *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. Art 1, Sec. 101, which as against the impairing of the obligation of contracts applies to judgments or decrees, which do, regardless of whether rendered upon such a statute, as this Court has more than once held.

III. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny any person, within the jurisdiction, *the equal protection of the laws.* XII, Amend. of Fed'l Const., Sec. 1." Which prohibition applies as well to the judicial as to the legislative departments of the States.

IV. Such judgment is also violative of Sect. 709 of the Rev. Statutes of the United States, as protects all rights, privileges and immunities claimed under such Constitution, or the authority exercised under the United States.

V. As it is of the provision of the Federal Constitution which requires the United States to guarantee to each State a representative form of government.

VI. As it is of the inherent powers of the Federal Government for self preservation, as Christian marriage is the basis of civilization, upon which the perpetuity of all such governments depends, and for other reasons appearing in the records, and the opinion rendered in such judgment.

VII. As it is to so much of Sect. 2 of the ordinance of 1787, as secures to a widow of a husband who died

intestate, her third part of his real estate for life, which so far as relates to real estate situate in the State of Illinois has never been altered, unless so far as relates to forfeiture for adultery of the wife, or of her taking jointure instead of such dower, and it appears from each, the record and the opinion in this case, as well as from the certificate of Honorable John M. Scott, Chief Justice of the Supreme Court of the State of Illinois, which is a part of the record in the case, that it has not been by either, which ordinance as already appears, has been by an Act of Congress adapted to the present Federal Constitution, as it does that by two other Acts thereof subsequently passed, there is guaranteed to the inhabitants of such territory the enjoyment of "all and singular the rights, privileges and advantages guaranteed and secured to the people by said ordinance," of each of which Acts the judgment is violative as to all the plaintiff in error's claims, and while it is not of such ordinance only to the extent of her dower, this Court has held, that it has jurisdiction where a Federal question is involved in only a part of the cause.

VIII. And such judgment is also violative of that part of Art. 2 of that ordinance as prohibits both the "making of, or giving force to, any law that will in any manner whatever interfere with or affect private contracts or engagements, *bona fide* and without fraud, previously formed."

STATEMENT.

It appears from the record of the case that on the 21st of June, 1855, John George Roth, now deceased, and plaintiff in error were married in Chicago, Illinois, where they were then domiciled, and competent to marry each other, and did in strict conformity with the laws of that State as conceded by the Court, and appears from Sec. 8 of stipulation.

That in 1856 he took her to her father's in Strassburg, Alsace, France, with the intention, unknown to her, of deserting and abandoning her without just cause or provocation, and so did for the purpose of depriving her of any interest in his property, and of succession to any of his estate. That after having so deserted her until some time in 1863, (during which time he resided in Schorndorff, in the Kingdom of Wurtemberg, where she never had,) to accomplish such purpose by resort to the means through which it is claimed that he has, under a so-called edict of that country, hereinafter to be given, he took her from Chicago to Schorndorff, which purpose was unknown to her.

That soon after taking her there, he, by corporeal punishment, habitual offensive conduct, and harsh, humiliating, intimidating and terrifying language,—and by, in drinking places which he frequented and patronized daily, or nearly so, publicly stating, especially when his friends were present, that he did not intend to continue to live with her, and to use the language of one of Amalie's witnesses, "cracking poor jokes at her expense," on hearing which she became the more distressed on account thereof, and fearing that he intended to get a divorce from her, and that he thus, and so otherwise, habitually, coarsely, cruely and humiliatingly treated her, that in consequence thereof, and his relations with

Amalie, which will hereafter appear, she, previous to 1870, became a nervous, melancholic imbecile, incapable of protecting her own interests in pecuniary transactions, and has so remained.

That after having instituted a suit against her in that kingdom, for nullification of their marriage under that edict, he drove her away; or to use the language of two of Amalie's witnesses, "sent her away," in, as one of such witnesses, and two of plaintiff's in error testified, greater distress than they had ever before seen her; when she became domiciled at her father's in Alsace, the place of her nativity, of French parentage, and then a part of the empire of France.

That the Court having refused to proceed in the suit, he, as appears from Sec. 9 of the stipulation, commenced one in 1873, in which the so-called decree, hereafter to be referred to, was obtained, although as so appears, such edict had been repealed in 1872.

That, as appears from the record, Amalie admits that Roth, now deceased, told her that from the day of his marriage to plaintiff in error he had regretted it, and thought that he could, or should not continue to live with her; that he told her that he wanted one more worthy to inherit his property and that she was that person, and that when asked why she married him, said that she knew that he was a married man when they were married, but that she had been considering ever since 1862, (which was some eleven years before the rendition of such decree) whether she would marry him, and that to use her language, "it was some time before she could bring herself up to it," and that if she had not, some one else would have, and that she had a perfectly clear conscience about it; that she had urged him to get a divorce in America, but to use her own language "could not bring him up to it;" and that she had in vain

endeavored to have or urged him to sell his property in America, that she would not be troubled with plaintiff in error, and that from the record, the presumption that there was habitual sexual intercourse between them for years intervening such desertion in 1856 and the claimed rendition of such decree is irresistible.

That it further appears from such record, that after Roth had been sick for some thirteen or sixteen days, and in the opinion of his attending physician dangerously so, for some seven days, of which opinion Amalie was and had been aware, and after she had been informed by such physician about eight o'clock of the morning of the day of his death, that he probably could not or would not live a day, and that thereupon Gaup, Steiger, Muller, Ulinger and Albert Staehle, her brother, now deceased, were sent for, and about 9 o'clock, A. M. thereafter were in Roth's room in which there was none other than Roth, and that upon their arrival she sent the servant girl for cheese and crackers, or sausage for them, and on her return with it informed her that while they were in it no one could or should enter it, as it would be locked. When she went into the room, where about an hour before he became senseless and speechless, and about three before his death, he, as Amalie claimed in her answer, executed to her said brother a written instrument, that she, in such answer, claimed conveyed to him for her use the equitable title to all the real estate in the bill in this case described, and that during which he said to Gaup, "be patient, and I will get up and sign it," and to her, "why have you treated me so?" which claimed to be signature has no resemblance to that of Roth, nor of any one, as will appear from a comparison with one of his in the record, although she testified that she would have known that it was his, had she seen it on blank paper, and had not

seen him make it, because his signature was so uniform, and although it not only is, but is very plain, while the so-called one is as already stated.

That although he died about two o'clock of that day, no one save the undertaker thereafter on that day came to his house, while Schorndorff then contained about four thousand inhabitants, and he was far the most wealthy of its inhabitantss.

That some five of his nephews and nieces, with families, and a grand-nephew, then lived within a few miles of Schorndorff, and had railroad communication therewith, who were of his heirs-at-law, and of those provided for in the alleged contract, in Amalie's answer called a post-nuptual one, and in the opinion hereinafter to be referred to a "marriage and inheritance contract," and for whom he had long entertained a parental feeling and regard, and so pecuniarily assisted them, neither of whom had heard of his sickness until after his death, whom, or some of whom, Amalie told at his funeral that she would have informed them of his sickness, but for his death having been so sudden or unexpected.

That after unexpected developments appearing in the records, of which not a tithe have been given, Amalie testified that "upon the whole she had nothing to do with the obtaining of such instrument, and on the trials of the case renounced all claims under it, which, if possible, more conclusively shows that it was obtained for the purpose of preventing the descent of Roth's property to such heirs, and plaintiff in error.

That on the second of July, 1876, Roth died at Schorndorff, intestate, without indebtedness, and owner in fee simple of all the real estate described in her bill in this case, and of all which he was owner when he and plaintiff in error were married, and now, with the rents and profits which have accrued therefrom since his death,

is of the value of more than $200,000; and possessed of an estate in that kingdom of over $60,000, but how much has not been ascertained, for reasons apparent from the record; all which is unincumbered; leaving him surviving neither a child, nor a descendant of one.

That by reason of such marriage and his death, intestate, without a descendant, she became entitled, as his widow, among other things, to one-half of such real estate in fee simple, and to dower in the remainder thereof, and to two-thirds of the rents and profits of such real estate, which have accrued since his death.

The stipulation renders a further statement unnecessary.

Plaintiff in error in the Superior Court of the County of Cook, in that State, filed a bill in chancery against Amalie Staekle Roth, so-called, who claims to be his widow, and others, for the recovery of all of such interest, which on trial thereof, and on the 12th of July, 1881, by a decree of that Court was dismissed at her costs, for, as held, want of equity, which decree was by a majority of the Supreme Court of that State affirmed on the 12th of May thereafter, and on the 22d of September thereafter her petition for a re-hearing on such affirmance was denied by a diminished majority which was but one of that Court.

I.

Judgment of the Supreme Court Involving only Federal Questions.

The Court, in its opinion rendered upon such judgment, concedes:

That as the parties were domiciled in Chicago, Illinois, when married, and were manifestly competent to marry each other, and did, in strict conformity with the laws of that State, and that it was not affected by such edict, as it had no extra-territorial force, although, as

stated by the Court, Roth was then a subject of that kingdom, and had not obtained license from the sovereign thereof to marry, which is not only the reverse of the decree so recognized, but is irreconcilable with any other holding, than that plaintiff in error was the wife of Roth at his death, and is now his widow, there being no pretence that the marriage had been dissolved otherwise than by his death, which it could not have been only by a decree of divorce. Had Roth and plaintiff in error always been subjects of, and domiciled in that kingdom, and had, with intent to have married in evasion of such edict, and, had it ever had force, came here and been married, when and as they were, or at any other time, and to have immediately thereafter returned to that kingdom, and had there remained until his death, none of which is pretended, as such a marriage would have been neither incestuous nor revolting, it would have been under the law of nations, valid everywhere, and so remained under any circumstances, although the taint of fraud vitiates everything save a marriage, in favor of which only is an exception made, and for public policy.

Yet, as appears from such opinion, the judgment is that plaintiff in error is not the widow of decedent, and therefore not entitled to any portion of his estate, but that Amalie is, and as such is entitled by succession to a widow's portion thereof; and is based *solely* upon the *recognition* of such *decree*, made upon that edict, as is conceded in Section 6 of stipulation, *but for which it would have necessarily held such pretended marriage of Roth and Amalie, though claimed to have been celebrated after the rendition of the decree*, and also such post nuptial contract void, and have reversed the decree below, and could not have otherwise, as already appears from the record, opinion and brief, and particularly the concluding part of such opinion, which is:

"We are of opinion, therefore, the decree of nulity must be given in the courts here the same effect which would be given to it by the courts of the country in which it was rendered. The effect of the decree there, as we understand it, was not merely to establish conclusively the nulity of the contract of marriage, or of the marriage itself, but also to annul and terminate the status or marital relations of the parties, which arises from a *de facto*, as well as a *de jure* marriage, so as to leave them in precisely the same condition as if no marriage had ever taken place between them. This being the effect of the decree there, it must be given the same effect here.

Such then being the legal operation of the decree, it follows, that the appellant was not, at the time of Roth's death, his wife, either defacto or de jure, and hence she is not his widow, for no one answers that description who was not his wife at the time of his death, and consequently she has no right as such to succeed to his estate.

For the same reasons it follows, that the subsequent marriage between Roth and Amalie was lawful and valid, and that relations having continued up to the time of his death, it results that she, and not appellant, is his lawful widow, and, as such, is entitled to his estate.

It is true that the "marriage and inheritance contract" did not, upon his decease, have the effect of clothing her with legal title to the real estate in controversy, as his survivor, as it doubtless would have done, had the property been situated in the Kingdom of Wurtemburg, instead of here,—for it is not competent for parties here, or elsewhere, by mere agreement, to change the manner of transferring real property in this State, but the agreement in question, upon his decease, operated as an equitable assignment of the estate to her, which was properly enforced by the decree in this case.

Having reached the conclusion stated with respect to the decree of nulity, it is therefore unnecessary to discuss the effect of the compromise above alluded to, and relied upon as an estoppel by appellee. Whatever our views might be with respect to that matter, we are of opinion the law is with the appellee, on the grounds already stated. Decree affirmed."

From which, as well as from the whole of such opinion, it is apparent that such judgment was in no way based upon the so-called "post-nuptial contract" nor any other instrument or thing, nor otherwise than as stated, because it holds that Amalie is entitled by succession, as the widow of decedent, and such contract is void if she is not, not only because of want of competent parties, as such can be made only between husband and wife, and are void, as against public policy, if the relation is not legal, and it is apparent from each, the record, the opinion of the court, and brief of opposing solicitors, already referred to, that the court would have so held, had it not held that Amalie was the widow of decedent, although she never was. And because such holding would be affirmative relief, to which Amalie is not entitled, because plaintiff in error was not made defendant to any cross-bill filed by her, and other reasons stated, as appears from the record.

It is conceded in Section 6 of stipulation that the decision of the Supreme Court is based upon the decree, and that the validity of the marriage between Roth and Amalie, and of the marriage and inheritance contract depends upon the validity of the decree; and in Section 3 it is conceded that if a Federal question is involved in this case that this court has jurisdiction.

THE DECREE IS WITHOUT JURISDICTION.

Because—

1. The edict upon which it was rendered never had even local force, and it so appears from authority introduced by Amalie's solicitors, as will appear.

2. Conceding that it had such force, it was penal, infamous and against public policy, and were it not the claim under it is based upon it, and not upon the common law, and it, as appears from Section 9 of such stipulation, had been repealed without a saving clause, over two years before the commencement of the suit, on which the decree was obtained,—as to which authorities will be produced.

3. Conceding such force, it had none extra-territorially, and the Court so concedes, and plaintiff in error, as already appears, had a right to acquire a domicile, other than that of her husband, and has been domiciled in Alsace and Chicago, Illinois, ever since over two years before such suit was commenced, as is conceded in Section 4 of stipulation, and it could in no wise have affected its validity in the one country than in the other, neither thereof ever having been a part of such kingdom, and the Court expressly concedes that it could not have in the latter, upon the principle of which it could not have in the former.

4. That it appears from the testimony of one or both of Amalie's expert witnesses, that until 1879, which was some six years after the commencement of said suit, and eight after she had become domiciled in Alsace, there was no jurisdiction in that kingdom, only at the domicile of the defendant, when it was by statute conferred at that of complainant in proceedings for the nullification of marriage.

5. It appears from the decree, the answer of Amalie,

the opinion, and brief, and Sec. 1 of stipulation, that Roth, being a citizen and subject of that kingdom, when married to plaintiff in error was a jurisdictional essential to the validity of the decree, and that the judgment was based upon it, and necessarily that the validity of the judgment depends upon such citizenship, while he then was a naturalized citizen of the United States of America.

6. Conceding that she was domiciled in Wurtemburg, when the suit was commenced there, although she had been domiciled in Alsace over two years, there could have been no jurisdiction because the validity of a marriage is not governed by the law of any domicile other than where celebrated, but because he had after some seven years' desertion of her, taken her there for the fraudulent purpose stated, but upon a mistaken supposition of having accomplished it, had driven or sent her away over two years before then, wherefore, as the judgment of the Court, as appears from its opinion, is based upon the assumption that she was then domiciled there, upon the principle thereof, the validity of her marriage was not affected by such edict, and the decree is without jurisdiction.

Notwithstanding that the Court concedes the validity of plaintiff in error's marriage, and that it was never affected in Illinois, nor extra-territorially anywhere by such edict, and although such decree is without jurisdiction,—and as appears from the record, she has ever since about three years before the commencement of the suit, in which the decree on which the judgment is based, was obtained, been domiciled in Alsace, and Chicago, Illinois, in neither of which places could it have affected it, under such concession and theory of the Court, any more than if she had remained domiciled in Illinois,—and although conceding to such edict the dignity of a statute, the only claim made under it would be but stat-

utory,—and notwithstanding that it was not only infamous, but penal, and against public policy,—and that it had been repealed without a saving clause two years before the commencement of such suit,—and that by reason of the character of the edict, and that such claim is what is called statutory, independent of its having been penal, a judgment or decree rendered upon it an instant after it had been repealed would be void, as appears from authorities to be cited,—and that such decree is as much against the public policy of that kingdom, as nationally expressed by such repeal without a saving clause, as of that of Illinois and Christendom, and, as already appears, is against the laws of both countries, on which account the pretended marriage of Roth and Amalie, although celebrated as claimed, after the rendition of such decree, is locally, as well as elsewhere, polygamous, and therefore no more entitles her to any of his estate in that kingdom than here, it appearing from testimony of her legal expert witnesses, that such marriages are prohibited there, which would be presumed in the absence of evidence. The Court, nevertheless, not only recognized such decree, and although recognition could give it no more effect here than it had there, which at most would be to render it void there (not conceding that it had any), by usurpation and without due process of law did so,—by holding that it rendered it void here, which is not only a holding that marriage may become, at the will of the depraved, but assignation, and a snare to the innocent, unoffending, and at least morally virtuous, by rendering the legitimacy of the relation of the parties, and of the issue thereof, illegimate, and divesture of rights of property, even after the death of the parties; and is a precedent, which, if recognized, would render such rights of property of little, if any, comparative value, as the validity unlike

the solubility of marriage, is involved in all adjudications of such rights, regardless of when or where commenced, and of the parties thereto, and of transfers of such rights, and the consideration therefor and good faith thereof.—And the further holding of the Court that Amalie became the wife of Roth through a pretended marriage, which had it been celebrated at the forum, and *loci contractus*, would have subjected him to the penalty of confinement in the penitentiary, and that by reason thereof, and the death of Roth, she became his widow and as such entitled to succession to his estate, is one, not only in favor of the lawfulness of polygamy, but of succession claimed solely through the commission of a crime, by a beautiful woman, who had for more than twelve years, endeavored by prostitution and criminal intercourse with him, the most loathsome and detestable of men, and an invalid some twenty-eight years her senior, and without regard to other means, to acquire it, while knowing as she did, and as she did at the time of such pretended marriage, that plaintiff in error was his wife, as appears from the record, to which reference has been made.

The judgment is inconceivably worse than an enactment authorizing polygamous marriages, as such an act would be notice of the character of the relation, and become a part of the contract creating it, and would not retro-actively affect the relation, while the judgment does so operate. The laws which are a part of the marriage contract of plaintiff in error, subject a party to a polygamous marriage to the penalty already stated, yet the judgment deprives her, not only of her personal marital rights, which are equally protected with pecuniary ones,

Rose v. *Himely*, 4 Cranch.,

but of vested rights of property acquired by her marriage. "The legislature cannot take from the husband

a vested life estate and give it to his wife. *Rose et al* v. *Sanderson*, 38 Ill. 247."

"*Vandusen* v. *Vandusen*, 6 Paige, Ch. 366," but also of accumulated vested rights, consequent upon the death of her husband, intestate, without a surviving descendant, by giving, as already appears, not only extra-territorial force to the edict, which it concedes that it never had, and as appears from *Sottomeyer* v. *De Barros*, cited by Amalie's solicitors, never had even local force, and although it had been so repealed, a retro-active operation, as it concedes that it never affected the validity of her marriage in Illinois, nor extra-territorially.

It is stated, as already appears in such brief, and in Sec. 6 of stipulation, that the judgment is *entirely* based upon the effect and operation of the decree, and in Amalie's pleading, as appears from Sec. 1 of stipulation, that the finding in such decree that Roth was, when married to plaintiff in error, a citizen or subject of Wurtemberg, was a jurisdictional essential to the validity of the decree, both of which appears from the opinion of the Supreme Court, wherefore its judgment is dependent on the fact that he was such a citizen and subject, as it is conceded to have been, so based upon such decree, and if he was not then such citizen and subject, upon such concession by the court, and Amalie and her solicitors, it is without jurisdiction, and it would be without jurisdiction, had he then been such citizen and subject, under the opposite theory of Amalie's solicitors, and under which, upon the principles of their former one which is also that of the Supreme Court, and would necessarily have reversed the judgment of the Superior Court; which theory is, that in Illinois foreigners and citizens may marry, and that their *rights are the same* as if both were citizens, and that they may there as well as citizens take *by inheritance*, for which they refer to

Ch. 39, Rev. Stat. of that State, which was taken after having obtained the affirmance of such judgment on the previous opposite one, holding citizenship to have been an essential—and, doubtless, to have prevented the reversal of such affirmance, without the knowledge or having thought, that such theory was also within the fourteenth amendment of the Federal Constitution, a part of which is that: "No State shall make or *enforce* any *law*, (not necessarily statutory) which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive another of life, liberty or property without due process of law, nor deny to *any* person within its jurisdiction the equal protection of the law."

Of which such affirmance is violative, under such concessions of rights, regardless of citizenship, which renders it immaterial in this case, and it is independent of them as they are correct, and would not have been referred to but for being a concession of the immateriality of what was claimed by them and regarded by the Supreme Court as an essential to such affirmance as already appears. Wherefore regardless of citizenship the decree is necessarily without jurisdiction, and its recognition, and such affirmance as well for such as other reasons stated are violative of such amendment as well as of other constitutional provisions and enactments to be referred to.

The Court although as conceded in Secs. 1 & 2 of stipulation, that Amalie alleges in her answer that Roth, at the time of his marriage with plaintiff in error, was a subject or citizen of Wurtemburg; that his being such citizen or subject at such time was essential to the jurisdiction of such decree and that the Court found that he was then such citizen or subject, and that plaintiff in error in her pleadings denied that citizenship or his being

a subject of any country was material, but alleged that at the time of her marriage he was a naturalized citizen of the United States of America; that she, after having given to Amalie in Stuttgart, Wurtemberg, while depositions in the case were being taken there, notice to produce on the trial of this cause the Certificate of Naturalization of said Roth as a citizen of the United States of America to be used by plaintiff in error as evidence in the trial thereof, and that if she did not plaintiff in error would prove that he was by parol testimony — and after having on the trial of this cause proven that all the records of all of the Courts of Cook County had been burned in 1871, which was some two years before the commencement of the suit in which such decree was rendered — offered to prove on the trial of this cause that said Roth, some thirty-two years ago, admitted that he was such naturalized citizen. To which Amalie objected on the ground that such citizenship could not be proven by parol testimony, which objection the Court sustained for which plaintiff in error excepted and assigned error in the Supreme Court of the State of Illinois.

By reason of such offer and refusal, the case should be regarded as if Roth was a naturalized citizen of the United States, and if so, neither such edict nor decree could ever have, under any circumstances, affected the validity of plaintiff in error's marriage, as it does not purport to, and never did, nor could have, had he been such citizen or subject.

The judgment is as much against the Federal constitutional provisions and enactments including the ordinance of 1787, for the government of the territory of the United States Northwest of the River Ohio, of which the territory of the State of Illinois was a part to which I have referred in the assignment of errors in this Court, a copy of which is part hereof and to which I will refer,

as if it had been made upon a statute of this state alike violative of such provisions and enactments or without regard to any statute, edict or decree, and involves a question upon which civilization, and consequently the existence of governments depends and is so much against humanity, human rights, common justice, and so shocking, alarming and aggressive, that its enforcement without the making of amends had plaintiff in error been a subject of any other country than this or that kingdom when it was made would be cause for reprisal by such country upon this Government, and as I believe will never be regarded as a precedent by the Court that rendered it.

While everywhere without this State the validity of plaintiff in error's marriage, is as inviolable under the law of Nations as it is here, under the laws of this State, if administered by its Courts, and if they are not, by the Federal judicial power. Yet and while from the limited operation of the laws of Nations and the respective exclusive operation of State and Federal ones consequent upon the celebration of the marriage in this State, no international question is involved in its protection here, although all such laws have been violated in the recognition of such decree, which cannot affect its validity at least here where the Court, in its opinion, concedes that it is valid and binding for all purposes, probably no other that has been pending no longer, has been published so generally, or with as much expatiation throughout this country, and in many of the principal cities of Europe, as involving many very intricate and important international questions. Did ever before any other Court decide that a marriage which it conceded had been celebrated within its jurisdiction, by parties domiciled in it, and manifestly competent to marry each other, and did in strict conformity with its laws, became always

void, and that the relation of the parties were the same as if they had never been married, upon the assumption that a decree of a foreign country on such a statute which had been so repealed and never had any application, was paramount to its own laws, especially in a controversy for succession, between the widow of such a marriage, and one claiming to be a widow, but who was the mistress of the widow's husband, to real estate situate within the jurisdiction.

Neither the Superior nor Supreme Court expressed any opinion as to the effect of the repeal of the edict without a saving clause, although so made in 1872 and before the commencement of the suit in which the decree was rendered as appears from Sec. 9 of Stipulations.

Nor upon the fact conceded, in Section 4, of stipulation and appearing from the record, that plaintiff in error was domiciled in Alsace from October or November, 1870, to 1877, and ever since has been in Cook county, Illinois, though before each of them I insisted that either thereof was conclusive in favor of plaintiff in error and produced authorities so showing, although if otherwise they would be immaterial, and also presented authorities sustaining my position in the petition for a rehearing, in which I submitted whether such omissions were not remarkable, especially as each thereof were conclusive against the decision of each court, and insisted upon an opinion on each thereof, presenting additional authorities thereasto, and contended that had it not been so repealed, and conceding that she had theretofore been domiciled in Würtemburg, while it appears from the record that she was taken there by her husband for the fraudulent purpose already appearing, and by him driven or sent away upon the supposition that it had been accomplished, over two years before the commencement of the suit in which such decree was

obtained; yet and although upon such concession the court should have found that plaintiff in error was decedent's widow, and as such entitled to succession to his estate, and necessarily upon the theory of such opinion that the validity of the marriage only became subject to such edict by a change of domicil to that kingdom, have reversed the decree of the Supreme Court, it gave to such edict, that never had local force, not only an extra-territorial one, but a retro-active operation against vested rights, as appears from such opinion, and denied such petition, (by a diminished majority, which was but one, Justice Dickey having also dissented to such denial,) without delivering an opinion, and consequently without expressing one upon any of such matters, and although it then appeared from uncontrovertible testimony that plaintiff in error had been domiciled in Alsace and Cook County, Illinois, ever since in 1870, as it now does from such stipulation, upon which testimony and the holding of the Court, that the edict had no extra-territorial force.

Why did not the Supreme Court enforce its own laws, instead of enforcing as against them, and its institution—marriage—an edict which, as appears, never had any force, and after it had been so repealed giving to it not only extra-territorial force, but retro-active operation, which is more offensive to due course of law than what is called the personal or migratory law.

The court not only violated the law of nations in recognizing such decree, but also the maxim of the laws of nations in violating its own laws. No court ever more committed against its positions than does an application of such, its concessions, commit it against both judgments rendered by it.

The next most remarkable judicial action to such judgments are such omissions which I believe to be likewise without precedent.

Any judgment or decree rendered on a statute under which only, a party claims without any common law right, or upon a penal one, and the edict is highly penal, or upon an infamous one, an instant after its repeal is void unless in some cases because of a saving clause.

"A right of action, which does not exist at common "law, but depends solely upon statute, falls with a repeal "of statute without a saving clause, or a general law "saving pending suits, unless that right has been carried "into judgment.

"18 A. M. L. R., 735, refers to

"*Curran* v. *Owens*, 14, 17, Va.

"Greenleaf states as the result of the weight of modern opinion, that personal disqualifications arising not from the laws of nations, but from positive laws, especially of a penal nature, are strictly territorial, and cannot be enforced in any country other than that in which they originated, which is apparent from *Sims* v. *Sims*, 75 N. Y. 466."

Statutes restricting the liberty of marriage are penal. "1 Hagg. Court R. 262, *Hodgkinson* v. *Wilkheir*, referred to in Wilberforce Statute Law (1881), 244."

"The repeal of a penal statute before or pending suit "without a saving clause obliterates the offense, and no "judgment can be rendered therefore.

"*Schooner Rachael* v. *U. S.*, 6 Cranch, 329.

"*Yeaton et al.* v. *Schooner General Pinckney*, "*etc.*, 5 Cranch, 281.

"*Norris* v. *Crocker et al.*, 13 How. (U. S.) 429.

"*U. S.* v. *Passmore*, 4 Dallas, 349.

"64 Ill. 542, *Wilson* v. *O. and M. R. R. Co.*

"71 Ill. 587, *County of Menard* v. *Kincaid.*

"79 Ill. 358, *Kipp* v. *Lichtenstein.*

"56 Ill. 285, *Nalor* v. *Galesburg.*

"Bishop on Statutory Crime, Sec. 178.

"Sedwick on Stat. and Constitu'al Law, 108.

"A penalty for recovering usurious interest in a con-
"tract until enforced is subject to legislative control,
"and may be abolished wholly or in part.

"*Wooly et al.* v. *Alexander et al.*, 99 Ill. 108."

"Nor for the recovery of money paid in violation of
"law, when the statute giving the right to recover money
"so paid was repealed during the proceedings.

"101 U. S. R. C. 677, *Douglas* v. *Pike County*.
"Blatchf. C. C. R. 229."

"The Statute gave a Judge power to deprive a plain-
"tiff of costs by certificate. The Judge refused to cer-
"tify until after a decision of a point was decided. It
"was held that after the repeal he had no power to grant
"the certificate.

"8 M. & W. 400, *Dorgan* v. *Thorn*."

"If an act has been repealed before the powers con-
"ferred by it have been exercised, although all condi-
"tions requisite for their exercise have been fulfilled, yet
"in the absence of a saving clause nothing further can
"be done under its authority; so that when an act giving
"treble costs for anything done in pursuance of that act
"upon a new suit, after the trial of the action, but be-
"fore judgment was signed, that act was repealed. It was
"held that the right to treble costs was taken away by
"such repeal.

"M. and W. 228, *Charrington* v. *Meatheringham*.

"Contracts for the sale of slaves are against sound
"morals and natural right, and have no validity, unless
"*sanctioned* by *positive law, and* can be *enforced so long*
"*only as the law remains in force, and if repealed* no ac-
"tion *lies* to enforce a contract made *previous* thereto.

"1 Dill. C. C. R. 219–343, By Dillon.
"21 La. Ann. 182, *Little* v. *Whicher*.
"25 Ark. 176, *Atkins* v. *Busby*.

Had it not been so repealed it never had even local force, and it so appears from *Sottomayer* v. *De Barros*, Law Reports, Probate Division, 81 Court of Appeals (1877), *supra*; as it does that had it such force the decree in Wurtemberg was not entitled to recognition, in this case, although introduced by Amalie's solicitors in the Supreme Court to show the reverse, to which, as well as other authorities so introduced therefor, and to sustain such edict and decree and obtain recognition thereof, as well as positions taken by the Supreme Court, and what it terms *well recognized* exceptions to the general rule *ordinarily* recognizing status, for a like purpose of justification, and of sustaining its recognition of such decree, I expect to refer.

That penal laws nor adjudications thereupon no more than criminal ones are entitled to foreign recognition, is I believe universally conceded, and will therefore refer only to Wharton on Conflict of Laws, Sec. 656 (1881), and Story on Conflict of Laws, Sec 95, 6 Reporter, 233.

Recognition of foreign judgments or decrees, in the absence of treaty stipulations, of which no pretence is made, is not matter of right but mere courtesy or favor extended, under no circumstances to judgments of foreign countries without international as well as local jurisdiction.

"*Rose* v. *Himely*, 4 Cranch, 267, by C. J. Marshall.

"*Wolfe* v. *Oqholm*, 6 Maule & Selwyn 92.

"Nor will they be recognized if rendered in violation of international jurisprudence, or if the statute on which the judgment or decree is rendered is peculiar legislation of a foreign country, or is an unreasonable protection to the subjects of the country where the judgment or decree is rendered, or is at variance with the principles of national justice of law, or the *lex fori*, or *lex*

contractus, or on its face presents a glaring injustice, although defendant appeared."

Don v. *Lippman*, 5 Cl. & Fin. 20.
Buchanan v. *Rucher*, 1 Campb. 65.
Piggott on Foreign Judgments, last edition, 91, 92, 97, 115 to 119 and 125 to 128.

Or if it appears that the foreign law or foreign process on which the foreign judgment rested conflicts with reason and justice, or that the foreign court in deciding the question depending more or less on the law of the country where the foreign judgment comes under consideration, has mistaken the law of that country, or is not definite, exact, final and conclusive, or was obtained by, or is founded.

2 Parsons on Contracts, 5 Ed. 606.
Story on Conflict of Laws, 598.

Or if it conflicts with reason and justice, or if the Court has proceeded upon false premises, or inadequate reasons, or mistake of local or foreign law, or if to a contract the validity of which is governed by *lex loci contractus*, a foreign court perversely insisted in applying its own law, which was in conflict with the former, thereby outraging the principles of international comity in a manner in fact amounting to a species of judicial misconduct.

32 L. J. Ch. 249, *Simpson* v. *Fogo*.
Parson on Courts (5 Ed.) 606.
Wharton's Int. Law, 747.
5 Clark & Finley, 20 *Don* v. *Lippman*.
Warrender et al. v. *Kingswill*, 8 Upper Canada, Queen's Bench Reports.

Had a printed copy been given of the decree, and why was it not, as the judgment of the Supreme Court was based solely on its recognition, as conceded, it would have been *self-apparent* that such recognition was a vio-

lation of the authorities referred to, as so showing, as Amalie concedes in Sec. 9 of her stipulation, that it appears from the decree itself, as well as from the testimony of her legal expert witnesses, that the edict was repealed without a saving clause before the commencement of the suit in which the decree was rendered.

There are two well-settled exceptions to the operation of a foreign law:

1st. When it would work an injury to a State or its citizens.

2d. When it is itself immoral.

Story on Conflict of Laws, 96.

2 Kent Com. 11 Ed. 592.

6 Mass. 378, *Glenwood* v. *Curtis*, or contravenes their policy, violates a public law, or offers a pernicious example.

Story on Conflict of Laws, 95.

Says Wharton on conflict of laws, (Ed. of 1881) Sec. 656, no country can force upon another its odious laws by formulating them into judgments, and that a judgment entered for a statutory penalty will not be enforced in a sister or foreign state.

Story on Conflict of Laws, 95.

I refer also to *Simonin* v. *Mallac*, 2 Swaby & Tristam 80 to 86, which holds that although parties subjects of, and domiciled in France, had in fraudulent evasion of the law of their domicile, prohibiting marriage without parental consent married in England,—and that the marriage had by a decree of a court of their domicile been declared therefor void. Yet in a suit based upon such decree brought in England the court held that the validity of marriages was governed by the *lex loci contractus*, and that as her marriage was valid there she was a wife in England though she might not be in France, and dismissed the bill, which says Story, Sec. 123 a of his Con-

flict of Laws, is the settled doctrine of England and America, and approved also by Savigny (Guthrie) who was the ablest of Prussian jurists, which has been referred to by Amalie's solicitors. I refer to Section 123 b of Story on Conflict of Laws, in which, and the preceeding section, *Stevenson* v. *Gray*, *supra*, and 16 Mass. 160, 8 Pick. 506, and 1 Pick. 506, *infra*, and 2 Kent's Com. (3rd Ed.) 92 and 93, are approved. I also refer to—

"It is no answer to this reasoning to say that every nation has a right, at its pleasure, to impose any restraints and prohibitions upon the marriages of its own subjects, whether they marry within or without its own territory. Admitting this to be true in the fullest extent to which it can justly be claimed in virtue of national sovereignity, it must be quite as true, and quite as obvious, that no other nation is bound to recognize those restraints and those prohibitions as obligatory upon such subjects, while they are domiciled within its own territory, or when they have contracted marriages there, according to the laws thereof. All such local municipal restraints and prohibitions must, under such circumstances, necessarily tend to mutual embarrassment and confusion in the intercourse between such nations. The very object of the rule, arising from the comity of nations, and a sense of the importance and public policy of giving the marriages everywhere the most solemn and binding obligation, is to secure all nations against such a conflict of laws. If France has chosen to declare that all marriages celebrated by its subjects in foreign countries, in conformity with their laws, but not according to its own laws, shall be utterly void, every other country has an equal right to declare that such marriages shall be deemed valid, and refuse to submit to the dictation of France. France may at home enforce such laws

upon her own subjects and their property when fonnd within its territory. But every other nation, by whose laws the marriages celebrated therein would be valid, would sustain such marriages, and treat the claims of France as an usurpation, founded in injustice and a disregard of the true duty and policy of all civilized nations in their intercourse with sach other.

Story Confl. of Laws, 7 Ed. Sec. 124 a."

In *Simonin* v. *Mallac* (*supra*,) the character of the prohibition which was for want of parental consent is as different as the one in this, as is the regard of the welfare of a parent for his children and that of a monarch for another's children, saying nothing of the latter being intended as a preventive to emigration, and tending to one of marriage and being against public policy for these and other reasons already stated, and that the parties were subjects of and domiciled in France when married and when the decree was rendered, while in this it appears from the records that the parties were domiciled in Chicago, Illinois, when married, and that plaintiff in error was never a subject of Wurtenberg, and had then never been domiciled there, but has been in Alsace and Chicago, Illinois, ever since over two years before the suit in which such decree was rendered was commenced.

The case of the inhabitants of Medway v. the inhabitants of Needham, 16 Mass. holds that, although marriages between negroes and mulattoes and white persons were not only prohibited by the statute of that State (Massachusetts,) but expressly declared to be void, and although on such account a mulatto, a negro and a white woman domiciled there, went to Rhode Island where their marriage was lawful to be married in fraudulent evasion of the law of Massachusetts, and were married and returned to Massachusetts, and although such

marriage if it had been celebrated in Massachusetts, would have been void, was valid because so by the *lex loci contractus*, and that marriages valid where celebrated are in every country, unless incestuous, etc., although the parties went to another state to contract it, with the view of evading the laws of their own country, and in fraud thereof, and that the rule is so settled in England, and recognized by the common law.

Putnam v. *Putnam*, 8 Pick., 433, holds that when a man has been divorced on account of adultery, a marriage by him within that state during the life of his first wife is void, yet, and though residing in that state, he to evade such law, goes into a neighboring state, where such marriage is valid, and is there married, and immediately returns and continues to reside in Massachusetts, the marriage is valid there, and that after his death his widow is entitled to dower in his state.

1 Pick. 505 to 8 Pick. 433.
Dixon v. *Dixon*, 1 Yerger, 110, Tenn.
Am. L. R., *Van Voorhies* v. *Brintnall et al.*, Ct. Appls, N. Y. (Recent.)
71 Penn. 240, *Van Starck* v. *Griffin*.
4 Cranch, 240, Parsons, C. J., Referred to Wheaton on Int. Law, 187.
6 Mass. 377, *Greenwood* v. *Curtis*.
122 Mass. 3, *Bullock* v. *Bullock*.
Savigny Priv. Int. Law. 1880, P. 175, Sec. 366; pp. 36 to 37; p. 234. Sec. 373; p. 406, Sec. 396.

To the same effect as all thereof is *Stevenson* v. *Gray*, 17 B. Monroe, 193, and *Dorsey* v. *Dorsey*, 7 Watts, 251, by Gibson, C. J. Although produced in one or both courts below by *Amalie's* solicitors, and that the latter also states that the *lex loci contractus* is never departed from unless to

sustain a marriage, while the court to which they offered it as authority violated not only the *lex loci contractus* but *lex domicilii*, *lex rei sitae* and *lex fori* by holding a marriage which it concedes to have been celebrated in conformity with such laws within its jurisdiction, when the parties were domiciled in it and "manifestly" competent to contract it, to have been always void, by giving extra territorial force and retro-active operation to an edict that never had even local force, and had been repealed without a saving clause, which holding is violative of the federal provisions and enactments stated, and the *lex fori* of the decree so recognised as well as its public policy as nationally expressed by such repeal, and of the laws and public policy of Christendom and of nations.

In very nearly, if not all of the American cases cited by both parties, upon the validity of marriages, they were sustained against the *lex domicilii* and *lex fori* and in some against decrees in the jurisdiction also though celebrated in such evasion thereof.

Her solicitor also so cited *Harney*, otherwise *Fornie* v. *Forney*, Jan'y Reports, 5 Probate Decision, 153, made in suit for divorce, which says that it is perfectly true that in some cases we do not recognize the status derived from the country of the domicile when such status would interfere with our views of the interest of our country, or morality, and the highest justice. I refer for example to the status of slavery. But a decree for divorce has never been put on any such grounds.

Harney, otherwise *Forney* v. *Forney*, Law Reports, 5 Probate Decision, 153.

Sottomayer v. *De Barros*, Law Reports, Probate Decision, 81 Court of Appeals (1877), so referred to by them, shows not only want of local jurisdiction, but that the

decree should not have been recognized had there been such jurisdiction, because it holds that prohibition of marriage for want of consent, for which only does the edict purport to, can be imposed only by the *lex loci contractus*, and that none for any other cause can be only by the *lex domicilii*, and, as is conceded, plaintiff in error and her husband were married in Chicago, Illinois, where they were then domiciled. Wherefore, and as jurisdiction can be conferred only by law, and none can be presumed to be by the common law for nullification of marriage, save for causes therefor under that law, which is not pretended in this case, there could not have been jurisdiction for such decree, for each of such reasons.

And as that case further holds that no country should recognize a law or decree of another, which causes an injury to its subjects, and as it not only appears from the opinion of the Supreme Court, but from such brief, that its judgment as stated in the latter, is "entirely based upon the effect and operation of the decree," and such decree does such injustice to plaintiff in error, who is a subject of the State of Illinois, within its meaning, as so used.

Each of the other authorities so referred to by them hold to the principle that her marriage could not have been affected by such decree anywhere; while *Rose* v. *Himely* does also that local, without international jurisdiction, does not entitle a judgment or decree to foreign recognition, and that the Court in which it is sought is to determine whether there was the latter.

Such solicitors, in the Supreme Court also produced the following, which, if possible, more conclusively shows that such decree should not have been recognized.

"No people are bound to enforce, or hold valid in their courts of justice any contract which is injurious to

their public rights, or offends their morals, or contravenes their policy, or violates their public law."

2 Kent, 457, 458.
Wharton Confl. L. 207, 165, (2d. Ed.)
Story Confl. L. 98, 244.
4 Phill., (Ed. of 1861), p. 529.
Smith v. *Godfrey*, 8 Foster, 382.
Forbes v. *Cochrane*, 2 B. and C., 448, 471.
Brook v. *Brook*, 9 H. L. Cas. 193.
Potter v. *Brown*, 5 East. 124.
Cin. Mut. H. A. v. *Rosenthal*, 55 Ill. 91.
Savigny, Priv. Int. Law, p. 248.

The marriage of Roth in the United States contravened the policy and public law of Wurtemburg."

Conceding that plaintiff in error's marriage did contravene the "policy" and "public law of Wurtemburg;" Story on Conflict of Laws, Sec. 124 a, while it already appears from authority cited by such solicitors, that it did not, as it was not subject to it, as it does from the repeal of it, without a saving clause, that such decree was as well against the public policy of that country as that of this. As Amalie's pretended marriage was injurious to the public rights of Illinois, offensive to the morals of the State, and contravened its policy, and violated its laws, why did the Court not apply the rule in favor of, instead of against, a valid marriage celebrated in its jurisdiction; especially as it could have for any one of such causes.

They also produced the following:

"Every country must be permitted to judge of the policy of its own law, and to enforce the same. This is a maxim of international law."

1 Bishop Mar. & Div., 368.
Story Confl. L. 18, 19, 21, 22, 23, 25.
Henry on Real and Personal Stat., 1.

Savigny, note A., 38, 40.
Bank of Augusta v. *Earle*, 13 Pet., 518.
Cin. Mut. H. A. v. *Rosenthal*, 55 Ill. 91.
4 Phil. P. I. L. 3, 11, 12, 13, 16, 24, 25.
Wharton Confl. L. (2d. Ed.,) 65, 207.

It appears from Sec. 7 of the stipulation, that Amalie's expert witnesses testified, that whether such decree would be entitled to foreign recognition depended upon legislation authorizing it, where recognition was sought, of which there is no pretence in this case.

II.

THE POSITIONS OF THE COURT ARE EQUALLY CONCLUSIVE EVIDENCE AGAINST SUCH RECOGNITION.

The Court says that ordinarily a personal status will be regarded on a change of domicile by the Courts of the acquired domicile, but that there are well recognized exceptions to the rule, which are: "Where the status is acquired, as in this case, in violation of the express provisions of the positive law of the State in which its recognition is asked, or if it be contrary to the spirit and genius of its institutions, as a title of nobility would be here. Or if it is opposed to its settled policy or to the good order and well-being of society, or to public morality and decency," because, says the Court, "in all such cases the status would not and should not be recognized by the Courts of the latter State, (p. 101 of printed record.)"

How could it have been acquired in such violation, if, as the Court concedes, the law did not affect it when celebrated, and had no extra-territorial effect, and that it was valid when celebrated, notwithstanding want of consent therefor, and such edict on the principle of *Sottomayer* v. *De Barres*, *supra*, presented by opposing solicitors, which is correct, the law was without even local force,

while recognition of plaintiff in error's marriage by the Court in Wurtemburg would have been clearly within both the rule and exceptions so relied upon by the Court as justifying such decree refusing it, and its recognition thereof. The recognition by the Supreme Court of such decree, and Amalie's marriage is clearly violative of both, because under the rule a status is only *ordinarily* recognized, which implies that all are not, and if any one should not be, Amalie's should not have been, because based upon a decree, holding to have been always void, a marriage so conceded to have been valid by the Court that recognized it, and because that both were against every provision of such exceptions, save that it has not appeared that Amalie's was "titled," and under both which plaintiff in error's marriage should have been recognized there, and that Amalie's should not have been here, and that neither *Baker* v. *Walker*, 83 Ill. 568, nor any other authority cited nor position taken by the Court to sustain its recognition of the status of Amalie applies.

Wherefore such recognition is reconcilable only with an absolute rule, that any status claimed, to have been based upon a decree of a foreign country, is entitled to foreign recognition everywhere, and as astounding, alarming and demoralizing as it is, it is the only ground upon which it is asked or was expected in this case, or could have been granted, for reasons too suggestive to be stated.

And as the decree is itself a contemptuous and defiant violation of the laws of the Court which recognized it, such recognition was but courteous submission to insult.

Conceding the local validity of Amalie's marriage, which I do not, it does not affect that of plaintiff in error, here or elsewhere than in that kingdom, which here is protected by the laws of its creation, and consequently

requires not the law of nations within the State of Illinois, although it should elsewhere be protected by them. Wherefore, while the attack upon its validity in Wurtemburg involved international law, no international question is involved in this case, as its validity can be determined only by the laws of this State, although upon a question of its dissolution by decree of divorce in a foreign jurisdiction it would be different, as it was contracted subject to such contingency.

As being also conclusive against such recognition, I refer to *Kergan* v. *Gebarty et al.*, 101 Ill. H., the Court says: "We shall not presume to put a construction upon the Statute of Wisconsin, deeming it unnecessary, *as according to the principle laid down in the case of Ross v. Ross, 129 Mass. 243, as we understand and accept it*, the rights of inheritance acquired by the adopted child under the laws of Wisconsin, will be recognized and upheld in this State, *only so far as they be not inconsistent with our laws of descent, so that if by our statute of adoption, the petitioner could not take, in this case, under our statute of descent*, then she cannot take, no matter what may be the law of Wisconsin in respect to the rights of an adopted child. Hence we need only to address ourselves to the enquiry whether an adopted child, under our statute of adoption, could inherit in a case such as this, and if we find that she could not, that determines the case against the petitioner."

Even then, if by the *adoption proceedings* in Wisconsin, petitioner did acquire, *under the laws of that State*, such a status of a child as made her capable to inherit from Mary Gertrude Kergan, as her sister, we *would not recognize and give effect to such capacity* to inherit *in this State*, as to *do so would be in contravention to our own law, and it is our law which must govern in the descent of real property, situate in this State.* In this, as

in that case, the question of real estate situate in this State was involved.

I refer also to *Wallace* v. *Rapley et al.*, Ill. 262, which was before that Court when this was, as astonishing to say was the previous one, as no two decisions were ever or could be more opposite.

While the Court states that plaintiff in error appeared by counsel, and in person, it does not that she plead that her marriage was celebrated in America, and was valid, and also the repeal of such edict. Yet such appearance is immaterial, as jurisdiction is conferred by law only, and, as often held by this and that Court, and probably by every one administering the common law, which has adjudicated upon the question, that when there is want of jurisdiction of the subject matter, neither appearance, answer, consent, persuasion, nor anything can confer validity, or preclude inquiry, even on appeal or error, nor, collaterally, not even after confirmation, and as it is equally settled that want of such jurisdiction need not be pleaded, but that it is the duty of the Court to, upon its own motion, even against the wishes and agreement of the parties, to interpose the objection.

The Court holds that it clearly appears from the depositions of persons learned in the laws of that country, that the Court there had jurisdiction, while it is stated in Sec. 9 of the stipulation, that it appears from their testimony as well as from the decree that it had been repealed without a saving clause before the commencement of the suit in which it was rendered, and it does from such depositions, that in that kingdom there was no jurisdiction in any case, only at the domicile of the defendant, until 1879, some six years after the commencement of the suit, and some eight after plaintiff in error had become domiciled in Alsace, when it was conferred in cases of proceedings for annulment of marriage

at the domicile of the plaintiff, which was elicited by cross questions. If there had been jurisdiction only at the domicile of defendant, when such suit was commenced, which was in 1873, would solicitors for Amalie have, as in Sec. 5 of stipulation it is conceded that they did have, asked such witnesses to examine the proceedings on which the decree was obtained, calling it a proceeding for divorce, and to state whether the Court had jurisdiction in cases of divorce, or would either of such witnesses have, if believing that there was only at the domicile, answered that there was jurisdiction in the case, especially if as learned as the Court says they are, or who believes but solicitors and witnesses called it a decree for divorce, only to, upon the theory that the wife could have no other domicile than that of the husband, show jurisdiction.

It was with much reluctance, after many cross questions and evasive answers, that such witnesses admitted that proceedings for nullification of marriage were based upon a void marriage, while those for divorce were upon a valid one, and were instituted for the dissolution thereof, and that the proceedings in the cases were different, and that a decree in one was not one in the other.

Conceding that the domicile of the wife is necessarily that of the husband, while it is not, as the suit was based upon the ground that plaintiff in error never was the wife of Roth, and the decree therein so holds, jurisdiction therefor could not have been obtained by showing that she was, although she was.

Had it been a suit for divorce there would have been no jurisdiction, not only for reasons already stated, and because jurisdiction in neither of such cases is inherent in any Court, and can be conferred only by statute, consequently none can be presumed of either of them in any Court, especially as in Sec. 9 of the stipulation it

is conceded that the decree was rendered upon such edict, and none appears to have been conferred in such as this is, until 1879.

The Court says that the marriage became subject to such edict because of the parties having been subjects or citizens of that kingdom, and sojourners in a foreign jurisdiction when married,—and of such edict, having in terms professed to have bound them when thus circumstanced,—and because of their having became redomiciled there, while neither of them were such citizens or subjects when married, and plaintiff in error never had been, nor domiciled there, as appears from the record, and they could not have been sojourning anywhere, much less in a foreign jurisdiction when married, as it appears from such opinion that they were then domiciled in Chicago, Illinois, and that decedent had settled there at an early day, and there accumulated a large amount of property, consisting chiefly of real estate, which is the subject matter in controversy in this suit; and it also appears from Sec. 8 of stipulation that they were then domiciled there,—and it does from the record, that he had been over twenty years before, and had been some eleven years before then married to a lady who had died, and that he had accumulated a fortune, a part of which is said real estate, so unless their domicile was in a foreign jurisdiction, and they could have been sojourners at it, neither of which is possible, upon such concession of the Court, saying nothing of what so appears from the record, there is want of jurisdiction.

The Court says, that as it understands the decree, it extended to the annulment and termination of the status, or marital relation, and that as it had such effect there, the same must be given to it here, while such judgment is based upon the alleged fact that no such relation

ever existed and so holds, and necessarily, that none was ever terminated, as a non-existent cannot be, and it is apparent from such decree that had it regarded the marriage as ever having been valid, as does the Supreme Court, that it would have dismissed the petition, or held that it remained so.

I refer to the very able and remakably terse dissenting opinion of Justice Walker, 104 Ill. 49, the decision being Id. 35, and a criticism made in No. 33 of Vol. 26, p. , of "The Journal of Jurisprudence and Scottish Law Magazine," Edinburgh, on the decree of the Superior Court in this case, which is the ablest I ever read.

III.

Application of the Law to what it most directly applies, most of which applies to all.

It is conceded in the stipulation, page 3 of this brief, which by agreement is made part of the record that if a federal question is involved that the Court has jurisdiction, as it is that the copies thereof to be filed by plaintiff in error are correct, and that the assignment of errors appearing in plaintiff in error's brief is a copy of those made on the back of the transcript of the record in the case. In *Pennicost* v. *Eaton*, this Court refused to dismiss when they could see a federal question raised though raised somewhat obscurely, and though they had a very *clear* conviction, that the decision of the State Court *was correct*, and so clearly that they affirmed the judgment with *ten per cent. damages for delay*.

I refer also to *Crane Iron Works* v. *Hoagland*, by C. J. Waite, 5 Morrison's Transcript, 4.

Since the act of 1867 the Court will under some circumstances examine the opinion of the Court below to ascertain whether the question is a jurisdictional one,

but the pleadings, bill of exceptions, judgment, in short, the record must be the chief foundation of the enquiry.

20 Wall. 333, *Murdock* v. *City of Memphis.*

96 U. S. 432, *Murray* v. *Charleston.*

"That the New York Court necessarily decided what effect the insolvent proceedings in Massachusetts had by the law and usage in that State, and that as it decided against the effect which the defendant set up for them, this Court has jurisdiction to review the judgment of the New York Court."

Crapo v. *Kelly*, 16 Wall. 610.

The question of jurisdiction may appear, either by express averment or necessary intendment in the pleadings or from the record, that the question was necessarily involved in the decision, and that the State Court could not have given judgment or decree without having decided it, notwithstanding other decisions to the contrary.

1 Wall. 143, *Bridge Proprietors* v. *Hoboken Co.*

21 Wall. 532.

21 Id. 636.

It being conceded that plaintiff in error and Roth were competent to marry each other, and did so at their domicil and where the real estate succession to which is in controversy is situate, and at the forum, and that she, if she was his wife at the time of his death is entitled to such succession, the only question that could arise there as to is whether the marriage has been dissolved by a decree of divorce, while it is not pretended that it has been. Yet the Supreme Court of Illinois, while conceding all such facts, holds that by reason of the so-called decree rendered in Wurtemburg, made on an edict of a monarch of that kingdom, proclaiming a marriage of any subject thereof without sovereign con-

sent void, such marriage became always void, and the relation of the parties the same as if they had never been married, and that by reason thereof and a pretended marriage of Amalie and Roth thereafter and his death she became his widow, and as such entitled to succession to his estate to the exclusion of plaintiff in error, although conceding in its opinion that the edict had no extra-territorial force, nor ever so effected plaintiff in error's marriage, and gave to it an effect here—which it never had there—conceding that it there rendered her marriage void, (while it had none,) it could not have effected its validity here, and notwithstanding that Amalie in such stipulation concedes:

1. That ever since, in 1870, which was over two years before the commencement of the suit in which the decree was rendered, plaintiff in error has been domiciled in Alsace, which was never a part of that kingdom nor governed by its laws, and in Cook county, Illinois, in neither of which places could it have effected it unless extra-territorially, which the court concedes that it did not.

2. That such decree was rendered upon the edict,—that the judgment of the Supreme Court of Illinois was based upon the decree,—and that it appears from the decree, as well as from the testimony of her legal expert witnesses, that the suit in which it was rendered was commenced after such edict had been repealed without a saving clause, and that the validity of Amalie's so-called marriage depended upon that of such decree.

3. That jurisdiction for such decree depends upon Roth's having been a subject or a citizen of that kingdom when he and plaintiff in error were married, although as she also concedes, that after plaintiff in error had given the notice and made the proof of the destruc-

tion of records appearing in Sec. 2 of her (Amalie's) stipulation, she, plaintiff in error, offered to prove that Roth had some thirty-two years ago admitted that he was a naturalized citizen of the United States of America, and that her solicitors objected thereto because it could not be made by parol; and that the court sustained the objection and that plaintiff in error's solicitors excepted therefor, and thereupon assigned error in the Supreme Court of Illinois wherefore in should be regarded as if proven.

4. That it is to be presumed from what she concedes in section five of her stipulation that there was no jurisdiction in Wurtemburg, where such suit was commenced, in any case only at the domicile of the defendant, and it so conclusively appears from the record,—and that although all such facts so conceded conclusively appeared upon the trials of this case. While her solicitors, as already appears, produced in both courts below authority not only showing another, which was that the validity of the plaintiff in error's marriage was never subject to the edict, but that were there jurisdiction, the decree was not entitled to foreign recognition, and yet there are others to which I would, had Amalie filed a sufficient printed record, refer.

While it seems unnecessary to refer to any other authority than I have showing want of jurisdiction for such decree or judgment of the Supreme Court of Illinois, based solely thereupon, as a number of those relating to the repeal of the edict without a saving clause are decisions of this and that court, I refer to pages 31 to 34 of my brief; and, with reference to want of jurisdiction because that the validity of plaintiff in error's marriage was never subject to such edict, I refer to *Coleman* v. *Tennessee*, 7 Otto 510, by Justice Harlan:

"Held that the State Court had no jurisdiction to try him for the offense, as he, at the time of committing it, was not amenable to the laws of Tennessee, that his plea although not proper inasmuch as it admitted the jurisdiction of that Court to try and punish him for the offense, if it were not for such former conviction, would not prevent this Court from giving effect to the objection taken in this irregular way to such jurlsdition. Accordingly this Court reverses the judgment and directs the discharge of A from custody under indictment."

And as showing that with jurisdiction such a decree is not entitled to foreign recognition anywhere, especially by the Court of a country upon the violation of the laws of which it is based, and where succession to real estate situate within it, is involved. I refer to pages 33 to 46 of such brief.

The judgment of the Court being that the marriage of plaintiff in error conceded in its opinion, and by Amalie to have been valid, became always void, and the relation of the parties as if it had never been celebrated, and divesting her of her marital rights, because:

Of such edict and decree rendered thereupon, although such edict never had even local force, and as so appears from *Sottomeyer* v. *De Barros*, introduced by Amalie's solicitors, because not only that the parties were not domiciled in that kingdom when married, but that of the prohibition being a personal one, which can be made only by the *lex loci contractus*,—and notwithstanding that such decree should not have been recognized, had it such force, and had not been repealed without a saving clause before the commencement of such suit on such edict, and had plaintiff in error been domiciled in that kingdom when it was brought, while it appears from Amalie's stipulation that ever since over

two years before then, she has been domiciled in Alsace and Cook County, Illinois.

If there is jurisdiction in this case on such edict there will be to eternity, in all cases as if it had never been so repealed. The judgment is as well against the implied power and authority of the Government, as the express ones, which are specified on pages 10 to 14 of this brief.

But to four of which will I particularly notice as the authorities referred to not only apply to all, but those that will be to number two which prohibits the passing of any law which will impair the obligation of contracts are conclusive against the only position on which defendant in error relies which is that it does not extend to judgments or decrees which do, unless made upon a statute that does. As the judgment necessarily does, I will not undertake to show what it *per se* does, nor comment upon the authorities to which I will hereafter refer as their applicability is too manifest therefor.

In the *Ohio Life etc.* v. *DeBolt*, on writ of error to the Supreme Court of Ohio, 16 How 131, by Tanney C. J. (Approved by *Taylor* v. *Ypsilanti*, 4 Morrison's transcript of decision of S. C. U. S. 339, decided at last term of this Court. Which after referring to *City* v. *Lawson*, 9 Wall 485, by justice *Nelson and Olcott* v. *Supervisors* says that *Douglas* v. *County of Pike*, 99 re S. *supra* is to like effect) it is held that:

"Indeed, the duty imposed upon this Court to enforce contracts honestly and legally made, would be vain and nugatory, if we were bound to follow these changes in judicial decisions, which the lapse of time and the change in judicial officers will often produce. The writ of error to a State court would be no protection to a contract, if we were bound to *follow the judgment which the State court had given and which the writ of error brings up for revision here*. And the sound and true rule is that

if the *contract when made was by the laws of the State as then expounded by all the departments of its government, and administered in its courts of justice, its validity and obligation cannot be impeached by any subsequent act of the legislature of the State, or decision of its courts, altering the construction of the law.*"

* * * "It was upon this ground that the court sustained contracts made in good faith in the State of Mississippi under an existing construction of its constitution, although a subsequent and contrary construction given by the courts of the State would have made such contracts illegal and void. The point arose in the case of *Rowen and others* v. *Runnel*, 5 How. 134, and the court then said that it would always feel itself bound to respect the decision of the State courts, and from time to time as they were made, would regard them as conclusive in all cases upon the construction of their own constitution and laws; but that it ought not to give them a retroactive effect, and allow them to render invalid contracts entered into with citizens of other States, which in the judgment of this court were lawful at the time they were made. It is true the language of the court is confined to contracts with citizens of other States, because it was a case of that description which was then before it. But the principle applies with legal force to all contracts which come within its jurisdiction."—Id. 431, 432.

"In all the cases brought here under the 25th Section of the Judiciary Act, this Court has never hesitated to determine for itself the construction and effect of any Statute of a State, brought under review, without reference to the previous adjudications of the highest Court of the State upon the subject. * * * *

"It is set forth in the writ that the judgment was recovered upon bonds issued by the City in 1854. This not

being denied by the return according to the settled law of pleadings, is admitted.

The act of 1852 and the provisions of the Code were in force at that time, and entered into and formed a part of the contract of the parties. They prescribed one of the remedies to which the bondholders were entitled in the event of default by the City. It has been uniformily held by this Court that such remedies are within the protection of the Constitution of the United States, and that any State law which substantially impairs them is as much prohibited by that instrument as legislation which impairs otherwise the obligation of the contract. *Bronson* v. *Kinzie*, 1 Howard 297; *McCracken* v. *Hayward*, 2 Id. 608. If the remedy be taken away the contract is in effect annulled. Nothing is left of it, of any value to the party whose rights are thus invaded. This subject was fully considered in *Van Hoffman* v. *The City of Quincy*, 4 Wallace 557. It was there held that laws for the collection of the requisite taxes, existing when the bonds were issued, subsequently repealed, still subsisted for the purposes of the contract, and that a writ of mandamus might issue from the Circuit Court to enforce them. Here the remedy is taken away, not by a subsequent repeal, but by subsequent judicial decisions. The effect upon the contract is the same as if the provisions of the Code had been repealed. This Court construes all contracts brought before it for consideration, and in doing so its action is independent of that of the State Courts, which may have exercised the judgment upon the same subject. *Swift* v. *Tyson*, 16 Peters, 19. This is one of the functions we are called upon to perform in this case. The fact that one of the elements in the case is a statute of the State does affect the legal result. Jefferson Branch of the *State Bank* v. *Shelly*, 1 Black 436. We are of the opinion that under the stat-

utes of Iowa, in force when the contract was made, the relator is entitled to the remedy he asks, and that this right can no more be taken away by subsequent judicial decisions than by subsequent legislation. It is as much within the sphere of our power and duties to protect the contract from the latter, and we are no more concluded by one than the other. We cannot in any other way give effect to the contract of the parties as we understand it. This contract was entered into in 1854. The earliest of the adjudications to which we have referred was made in 1862. If the construction ultimately given to the statute had preceded the issuing of the bonds; and become the settled law of the State before that time, the case, as regards this point, would have presented a different aspect."

Buty v. *City of Muscatine*, 8 Wall. 575–582, by Justice Miller."

Any enactment from whatever source emanating to which a State gives the force of law, is a statute of the State, within the meaning of the act regulating the appellate jurisdiction of this court over the judgments and decrees of the State courts.

Williams v. *Bruffy*, 6 Otto 176.

The decisions of a State court passing upon the effect produced by the act of the execution on a given contract in the late civil war in the United States, is reversable here by court of error under the second section of the act of February 5, 1867, amending the judiciary act, which is section 709 of the Revised Statutes.

Examine 102 U. S. 686, *Sharpe* v. *Doyle*.

It is also objected that it does not appear on the face of the record the validity of a statute or law of the United States, or of the statute of a State, as repugnant to such law, or that the construction of any statute of the United States was drawn in question.

This, we think, a clear misapprehension of the material question involved in the case. That question was, whether the mortgage of the vessel to the defendants, only recorded under an act of Congress in the Collector's office, gave a better lien upon it than the subsequent attachment issued out of the Superior Court of Buffalo in favor of the plaintiff. The construction of this act of Congress, and its force and effect, as it respected the mortgage security under which the defendants claimed a right or title paramount to that of the attachment creditor, was necessarily in question, and must have been passed upon by the Court, and as its decision was against this right, the very case is made provided for in this section.

Aldrich v. *Etna Comp.* 8 Wallace, 495.

CONTRACTS.

In *Tyler* v. *Maguire*, 17 Wall. 253, on writ of error from the Supreme Court of Missouri, in a suit in which it was sought to have the title to lands held by defendant under a prior patent from the United States divested and vested in complainant.

The Court held under Sec. 25 of the Statute of 1879, that the legal title to the premises was in the complainant under the *second* patent and reversed the decree and remanded the cause.

The Court below held that although by the second patent the title was vested in plaintiff in error, as he by the laws and practice of that State had an adequate remedy at law, that therefore there was no jurisdiction in equity and again dismissed the petition upon the hearing of the second writ, this Court decided that the legal sufficiency of the ground maintained by the Supreme Court for its second decision was a question within its jurisdiction, as it was too late to have raised such question after the

whole case had been decided and the case had been remanded for final judgment, and entered a decree reversing that of the State Court and declaring the lands in controversy to be vested in the plaintiff in error, and ordering a writ of possession to be issued by the clerk of this Court directed to the marshal thereof.

While the decisions were made under a constitutional provision and the 25th section of the Judiciary Act of 1789, neither of which in terms prohibits the rendering of judgments or decrees, each of such decisions do and are conclusive against Amalie. Conceding that they are not, this court, I believe, has held that such act is superceded by the second section (709) of the Federal Revised Statutes, enacted in 1867, which contains the following provision which the former one did not, and which is likewise conclusive against Amalie, and which is, "or where any title, privilege or immunity is claimed under the constitution, or treaty, or statute, or commission held, or authority exercised under the United State."

Conceding as contended by Amalie's solicitors against such decisions of this court, it would not affect its jurisdiction of this case because of the more comprehensive prohibitions of the XII Amendment of the Federal Constitution, which in *terms* extends to the *enforcement* as well as the making of such laws as it prohibits, and in terms extends to *any law*, of course regardless of how or where made, which is: "No State shall make *or enforce* any law which shall abridge the privileges or or immunities of the citizens of the United States; nor shall any State *deprive any* person of life, liberty or property without due process of law, nor deny any person *within the jurisdiction the equal protection of the laws.*"

To say that the State of Illinois has not as against

plaintiff in error violated every provision of such amendment, is to deny that its judiciary is one of the departments of its government, because it conclusively appears that its court of last resort has, not only from its judgment in this case—the record therein and opinion rendered upon such judgment—but the concessions of the person in whose favor the judgment was rendered, and the virtual concessions of her solicitors in their brief in her behalf.

For the application of authorities I will make three divisions of the prohibitions of amendment:

1. Of abridgment of privileges and immunities, which has no necessary relation to property.

2. Of deprivation of life, liberty or property *without due course of law*.

3. The denial to any person within its jurisdiction of the *general protection of the laws*.

Had Roth died insolvent, and had been supported by the plaintiff in error, the judgment would have violated this provision.

" If under the faith of existing laws a contract of marriage be duly solemnized, or a marriage settlement be made, (as marriage is always in law a valuable consideration for a contract,) it is not easy to premise why a distinction of its obligations, without any default or assent of the parties, may not as well fall within the prohibition as any other contract for a valuable consideration. A man has just as good a right to his wife, as to the *property* acquired under a marriage contract. He has a legal right to her society and her fortune, and to divest such a right without his default, and against his will, would be as flagrant a violation of the principles of justice as the confiscation of his own estate. I leave this case, however, to be settled, when it shall arise. I have gone into it because it was urged with great earnestness

upon us, and required a reply. It is difficult now to say, that as at present advised, the argument, derived from its suits, does not press my mind with any new and insurmountable difficulty."

Trustees of Dartmouth College v. *Norland*, 4 Wheat., 577, by Marshall, C. J.

"Liberties is the term used in Magna Charta, as including franchises, privileges, immunities, and all the rights which belong to that class. Professor Sullivan says, the term signifies the privileges that some of the subjects, whether single persons or bodies corporate, have above others by the lawful grant of the King; as the chattels of felons or outlaws, and the lands and privileges of corporations."

The privilege then, of being a member of a corporation, under a lawful grant, and of exercising the rights and powers of such member, is such privilege, liberty of franchise, as has been the object of legal protection, and the subject of a legal interest, from the time of Magna Charta to the present moment."

* * * Id. 570.

"No elector has a particular personal interest, but each has a legal right to be exercised at his own discresion, and it cannot be taken away from him."

* * * Id. 572.

Of deprivation of life, liberty and property without due process of law.

"If there is no power in the legislature which passed such a statute to authorize the levy of taxes in aid of the purpose for which the obligation is to be contracted, the statute is void, and so are the bonds or other forms of contract based on the statute."

There are limitations of such powers which arise out of the essential nature of all free government; implied reservations of individual rights, without which the

social compact could not exist, and which are respected by all governments entitled to the same.

Loan Association v. *Topeka*, 20 Wallace, 655.

"The act of March 25, 1874, to ratify and confirm certain ordinances is in violation of the Constitution of the State, and therefore void.

"As the attempted assessment was absolutely void, the act of the legislature was an attempt to levy a contribution within a certain district, and to declare that each lot named in the original roll should pay a sum arbitrarily fixed. This would be to create a lien on defendant's real estate, which, if the law were valid, the courts would be compelled to enforce.

"If this can be done, the legislature may take the property of the citizen without any legal process, for there can be no difference between taking the property directly and imposing a lien upon it. But no person 'can be deprived of life, liberty or property without due process of law.' Const. Art 1, Sec. 1.

"The act of the legislature is an attempt at best to levy an assessment within a city. The legislature has no power to levy such assessment.

Brady v. *King et al.* 53 Cal. 44."

"On the other hand, we shall find that general rules sometimes are as obnoxious as special, if they operate to deprive individual citizens of vested rights "

Cooley Constit. Lim. 4th Ed. 440.

"It is not the partial nature of the rule so much as its arbitrary and unusual character that condemns it as unknown to the law of the land. Mr. Justice Edwards has said in one case: 'Due power of law undoubtedly means in the due course of legal proceeding, according to those rules and forms which have been established for the protection of private rights.' And we have met in no judicial proceeding a statement that embodies more

tersely and accurately the correct view of the principle we are considering, than the following, from an opinion of Mr. Justice Johnson, of the Supreme Court of the United States: 'As to the words from Magna Charta incorporated in the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this, that they were extended to the individual from the arbitrary exercise of the power of government, unrestrained from the established principle of private rights and distributive justice.' "

Id., Id.

Judge Cooley, in his Constitutional Limitations, 335, approving *Nesteast* v. *Gregg*, says that "due process undoubtedly means in due course of legal proceedings according to those rules and forms which have been established for the protection of private rights."

The phrase, law of the land, in Art. 7, § 1 of the Constitution, imparts a suit, trial and judgment, according to the course of the common law, or in the established and usual mode of contesting individual rights per Bronson, J.

Taylor v. *Porter*, 4 Hill Rep. 140.

The 14th Amendment of the Federal Constitution provides that no State shall deprive any person of liberty without the process of law. Held, that the ex parte determination of two overseers of the poor is not such process.

The city of Portland sued the city of Bangor for supplies furnished the alleged pauper in the work house of the plaintiff city, committed under a warrant of two overseers of the poor. Held, that the committment was illegal, that the plaintiff could not recover, and that the decision in *Hoth* case, 11 Maine, 208, and in *Portland* v *Bangor*, 42 Maine, 463, holding to the contrary,

are inconsistent with the Fourteenth Amendment of the Federal Constitution.

Portland v. *Bangor*, 65 Maine, 120.

Whether the State will grant these franchises, and under what conditions it will grant them, it decides for itself, but when once granted, the Constitution holds them to be sacred, till forfeited for just cause. * *

Every Statute which takes away, or impairs vested rights, acquired under existing laws, must be deemed retrospective. *Loirely* v. *Wheeler*, 2 Gal. 103.

That all such laws are retrospective was decided also in the case of *Dash* v. *Van Kleck* where a most learned judge quotes this article. 7 Johns Rep. 477.

Trustees of Dartmouth College v. *Woodward*, Marshall, C. J. 572, 577.

Judge Cooley (Cooley's Const. Lim. 4 ed. 449,) says: "But a vested right of action is property in the same sense in which tangible things are property and is equally protected against arbitrary interference; where it springs from contract or principles of the common law it is not competent for the legislature to take it away."

"Retro-active operation can not be given to affect vested rights. Legal relations should be preserved in their original nature and efficacy upon principle. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed retrospective.

2 Gallis U. S. 139, *Society for Propagation of the Gospel* v. *Wheeler*.

Sedgwick on Stat. & Const. Law, p. 172.

Story on Const., Sec. 1399.

Kent vol, 1, p. 435, of his commentaries, "A retro-

spective statute affecting and changing vested rights, is very generally considered in this country as founded on unconstitutional principles, and consequently inoperative and void, But this doctrine is not understood to apply to remedial statutes, which may be of a retrospective nature *provided they do not impair vested rights, and only go to confirm rights* already existing, and in furtherance of the remedy by causing defects and adding to the means of enforcing existing obligations."

The judgment of the Supreme Court of Illinois giving not only extra-teritorial effect but retroactive operation to the edict which never had even local force after it had been repealed, without a saving clause and without having jurisdiction against its own law and Federal constitutional provisions and enactments, is inconceivably worse than the assumption of the migratory or personal law than which none is more offensive to the common law, and is without due process of law, if the term does not mean undue process of law.

3. Of denial to any person *within its jurisdiction of the equal rights of the law*, which in this case are those of a widow of her vested rights of succession as such under the laws of the State of Illinois to real estate situate in it, of which nothing more need be said, and to which all the authorities to which I have referred applies.

While, as appears from Secs. 1–2 of stipulation, Roth's citizenship or being a subject of Wurtemberg when married to plaintiff in error, was claimed to be a jurisdictional essential to the validity of the decree, and as it so appears, the judgment of the Supreme Court of Illinois is based upon such decree, yet the Superior Court refused to permit plaintiff in error, after having made the requisite showing therefor, to prove that he had admitted that he was then a naturalized citizen of the

United States of America, upon the objection of Amalie's solicitors, that it could not he proven by parol testimony, for which plaintiff in error excepted and assigned error in the Supreme Court of the State of Illinois, from which concession of Amalie and the contention in her solicitors' brief, that citizenship of Roth was immaterial, it appears that its materiality was asserted to obtain the judgments, and is being denied to prevent their reversal; if citizenship, as now contended, is immaterial, there is no jurisdiction for either of such judgments or decree. Conceding otherwise as plaintiff in error was so prevented from proving that he was so naturalized, the case is to be regarded as if she had, and there is no pretense of jurisdiction for any of such adjudication, if he was.

It being now 11 o'clock, A. M., of March 3d, and as this is required in this Court at 12 M. on the 5th inst., and as I have misplaced the authorities which I intended to submit as to Sec. 2 of the ordinance of 1787, I will refer to my assignment of error, p. 11 of my brief, and to page 9 thereof, from the latter of which it appears that by three federal enactments such ordinance was adapted to the present federal constitution, and "all and singular the rights and privileges and advantages granted and secured to the people by said ordinance," were guaranteed to the people. My recollection of a case from Iowa the opinion in which was, I think, delivered by Justice Miller, and although against jurisdiction, is that it states that Iowa was not a part of that territory and that the ordinance under which jurisdiction was claimed had been changed by an enactment of that State or of Wisconsin, of which it had been a part; wherefore, if correct, as the territory of Illinois was a part of the Northwestern territory, and the act under which plaintiff in error claims jurisdiction has not been changed, it would seem that this Court has jurisdiction under such

provisions of the ordinance. It is stated in the brief for plaintiff in error that dower is a common law right, which it is, and as it conclusively appears from authorities to which I have referred, that the deprivation of common law rights is against due process of law, jurisdiction in this Court is conceded by such statement that it is a common law right. From recollection I refer also to *Hoffman* v. *City of Quincy*, 4 Wall. 550.

All which is respectfully submitted.

C. M. HARRIS,

Solicitor for Plaintiff in Error.